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THE PRAGMATIC POLITICS OF MR. H. J. LASKI

W. Y. ELLIOTT

University of California

In all the varied current of contemporary political theory which seems to have set against the conception of unitary sovereignty as the basis of the structure of the state, the work of Mr. H. J. Laski stands out sufficiently to command general attention. Perhaps this is as much because of the arresting fashion in which Mr. Laski has challenged the traditional doctrines of political theory as it is from the positive content of his own theories. He has seized upon the ideas centering about group rights which Drs. Figgis and Maitland have forced so brilliantly upon modern attention, and has made great play with them in developing Mr. Ernest Barker's idea of "The Discredited State."[1] Because of the radical implications of

[1] Since the appearance of Mr. Barker's much-discussed article on "The Discredited State" (*Political Quarterly*, Feb. 1915) much water has flowed under the bridge, and it has borne Mr. Barker's ideas along with it. Even in that article he made specific reservations as to the nature of the state's "discredit" which robbed it of any such significance as Mr. Laski has attached to it. Mr. Barker's position in modern political theory is important enough to make it worth while to determine what his real attitude is, if one may judge by his later pronouncements. To that end it may be sufficient to cite from his brilliant little study, *Political Thought in England from Herbert Spencer to To-Day*, pp. 177–183, and 248–251.

Mr. Laski has so often made grateful acknowledgment of his debt to Mr. Barker and to Dr. Figgis that he has very nearly succeeded in crediting to their account some implications of their ideas which are entirely due to him.

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some of these theories as Mr. Laski has expounded them, political theorists have for some time been waiting for the promised exposition of Mr. Laski's ideas in more systematic form than has yet been offered by any of the historical and critical studies and the two brief introductory chapters of *The Problem of Sovereignty* and *Authority in the Modern State*, or even *The Foundations of Sovereignty*.[2] But as Mr. Laski is professedly a disciple of William James, it is perhaps too much to ask that he throw his ideas into any form that smacks of system and the rationalistic taint which pragmatists seem to attach to system. To the end of his days William James never entertained seriously the idea of giving his "way of looking at things" any more logical arrangement than the form of a series of rather popular lectures—with vast benefit, no doubt, to the "readableness" of his essays, but with equal difficulty to an unambiguous interpretation of what he meant by his suggestions. The similarly casual nature of such connection as has yet bound Mr. Laski's ideas to a single unity may excuse one, then, for finding some difficulty in selecting a method of presentation.

To begin with, it is obvious, if Mr. Laski is to be taken at his word, that he regards the Austinian conception of legally absolute sovereignty as nothing more than one of those pompous fictions in which the men of the robe delight, but in which there is no meaning for a political realism that would seek the substance behind the shadow. Austinian sovereignty is a concept of the most vicious unreality when applied to the pluralism of actual affairs. It partakes of that same absolutist temper that pragmatists hold is discredited by all modern thought, and it

[2] After due acknowledgment is made for the debt we owe to Mr. Laski's erudition, as shown particularly in the essays reprinted from the *Harvard Law Review*, "The Early History of the Corporation in England," and "Corporate Personality," his latest book, *The Foundations of Sovereignty*, seems hardly to justify its title by its contents. I can hardly think this collection of essays can be meant to take the place of the work on pluralistic political theory promised in "The Problem of Sovereignty." If it is so intended, one is certainly justified in pushing what is implied and suggested by Mr. Laski far enough to touch problems he has not himself dealt with. It is worth noting that he puts a rather more "economic interpretation" on political history than his sophisticated little study of *Karl Marx* would imply.

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engenders the same fetich-worship Mr. Dewey excoriated so thoroughly in his war-time denunciation of *German Philosophy and Politics*. The day of the "Omnicompetent-State" myth is done, and to talk of its sovereign power is merely to fly in the face of facts.

These facts present themselves to Mr. Laski under two broad heads, closely related: first, every individual act of the state can be reduced simply to the act of those in power, and commands no especial moral sanction because it is the act of the state; second, as the acts of the state are to be tested in terms of the purpose they express or fulfill, they must of necessity compete for the loyalty of individuals with the purpose of other associations as real as the state. This, I take it, is tantamount to the assertion that the political framework under which law is made, interpreted, and administered, has no claim upon obedience *qua* political framework, for it must eventually face the existence of other corporate bodies with autonomous wills of their own, with ends often distinct from its ends, and a hold on the lives of their members more secure than its hold.

Of late, it is true, there has been a tendency in Mr. Laski's attack on sovereignty to fall back on the juristic conceptions of M. Duguit, and the limitations upon sovereign power implied in the conception of *solidarité sociale*, and its positivistic sociology, rather than to stress the idealistic and individualistic ethics that hold suspect the absolute state. In the Translator's Introduction which he has written for M. Duguit's *Law in the Modern State* he has, indeed, attempted to graft the notion of real corporate personality and the idea of group rights upon M. Duguit's theory, which will itself have none either of corporate persons or of rights of any sort whatsoever.

So from his earlier conception of the state as a purpose-organization, Mr. Laski's politics have moved consistently toward the more "*solidariste*" notion of an organic society which M. Durkheim has furnished to M. Duguit.[3] This is not without

[3] M. Duguit has based his system of *droit objectif* throughout upon the positivistic sociology expounded in M. Durkheim's *La division du travail social*. For an apt discussion of this foundation see the "Editorial Preface" of Mr. Arthur Spencer to M. Duguit's contribution to Volume VII of the Modern Legal Philosophy Series.

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its significance, when one remembers that the whole effort of M. Duguit is to substitute objective law for subjective right as the basis of a legal system. At the outset, Mr. Laski questions the sovereignty of the state in the name of the moral sanctions of rights. But his pragmatic conception of what is meant by rights leads him to define them in terms of functional relation to the social organism: "What I mean by 'right'," he puts it in *The Problem of Sovereignty*,[4] "is something the pragmatist will understand. It is something the individual ought to concede because experience has proved it to be good." From this "ought," it is no very long step indeed to the "*devoir*" of M. Duguit, an obligation not moral but necessary, imposed by reactions of the social organism.[5] It leads away from the starting point of individual responsibility to the group morality of the so-called *science des moeurs*. And that is just where Mr. Laski winds up. Though he has banished authority in the name of the individual so far as legal sovereignty is concerned, he reintroduces the subordination of the individual in the name of the group. Corporate persons are real moral persons, he holds with Maitland. It is in the name of these larger persons within the state that its right to command is challenged.

The conception of real corporate personality serves Mr. Laski for a binding material for the elements of romanticist individualism and positivistic functionalism. He uses it to bring about so much of synthesis as he conceives to be a necessity to society. The state is merely one group among other groups: "It is clear that the sovereignty of the State does not in reality differ from the power exercised by a church or a trade union. The obedience the church or trade union will secure depends simply on what measure of resistance the command inspires."[6] If obedience is simply a matter of the degree of resistance a command inspires, then political organization has, indeed, no especial differentiating quality from other organization. In fact that is the sum of

[4] *Op. cit.*, p. 18.

[5] Cf. *Traité de droit constitutionnel*, Introduction, Vol. I, and the writer's "The Metaphysics of M. Duguit's Pragmatic Conception of the Law," *Political Science Quarterly*, Dec. 1922.

[6] *The Problem of Sovereignty*, p. 270.

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Mr. Laski's attack on the doctrine of sovereignty. Real sovereignty is to be found in society at large, "not in the coercive power possessed by its instrument, but in the fused good will for which it stands . . . The power Parliament exerts is situate in it not by law but by consent, and that consent is, as certain famous instances have shown, liable to suspension."[7]

Apparently it is his contention that, since the legal power of Parliament gets itself obeyed in historical instances only when it does not meet resistance strong enough to thwart it, the supreme sovereignty of the state, upon which law is based, is a concept devoid of reality. Pragmatists can understand that, too. As he puts it: "Sovereignty is, in its exercise, an act of will, whether to do or to refrain from doing. It is an exercise of will behind which there is such power as to make the expectation of obedience reasonable. Now it does not seem valuable

[7] *Ibid.*, p. 12–13.

Mr. Laski cites as an instance Cardinal Wiseman's resistance to Gladstone in the controversy over the papal decrees of 1870. But the reality of power had so largely gone out of the hands of Rome that the cardinal's challenge could only assume political importance if it were rebuked by force, and thus put in the light of martyrdom for religion's sake. Had the medieval power of the papacy been behind the bull which claimed primary allegiance for the church in all matters, temporal and spiritual, Gladstone's action would have been necessary. Witness the long struggle of Church and State out of which emerged the sovereignty of the national state. Mr. Laski's hint that the unions, too, can take matters into their own hands wherever there is a question of allegiance as between the state and themselves is meeting its pragmatic test in the present period of reconstruction. Perhaps it is not too much to suggest that the issue is being settled historically by the same rude persuasion Henry VIII employed against the claims of the papacy. Unions and corporations of all sorts may find freedom for their own ends within the state when, like the church, they cease to attempt political ends by nonpolitical means.

In any case, to argue that "the power Parliament exerts is situate in it not by law but by consent" is to miss the all-essential point Professor Krabbe has clinched, *i.e.*, that the "unity of legal rule," which is the form of law, is more important than particular content. It is this unity of legal rule which is made possible by Parliament as a sovereign legislature that commands consent, ultimately, and which is supported by a community "sense of right" as Professor Krabbe calls it (*vid: The Modern Idea of the State*, pp. 69–78). Man is sufficiently a political animal to be not so ready as Mr. Laski thinks he ought to be, to trust to "a ceaseless striving of progressive expansion," where the game is played without an umpire. And constitutions, to carry out the figure, are "The rules of the game."

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to urge that a certain group, the state, can theoretically secure obedience to all its acts, because we know that practically to be absurd."[8] Pragmatically speaking, therefore, law is whatever rules of conduct can get themselves obeyed in a given society. On these grounds there is no use in speaking of positive law as distinguished by a difference in kind from positive morality, to use the Austinian terminology. The difference is rather one of degree, of the distinctness with which the sanctions of social reactions are formulated and applied. This position, let us note in passing, is also that of M. Duguit.[9]

Is there not, though, a real distinction in kind between political activity and other organized action under authority? If the state has a purpose of its own, as Mr. Laski admits at times, is it not precisely that of establishing the rule of law, the law it makes? And does not the permanence of the end it serves provide a sufficient necessity to guarantee that positive law must assume the proportions of a self-completing system, distinct from positive morality by virtue of the determinate character of the organs for its declaration and enforcement? These questions bring up the reality of the legal conception of sovereignty. Is there any validity in the theory that the state can command obedience to the law it proclaims, and can demand absolute recognition of its sovereignty? Mr. Laski thinks not; and yet how can any system of law exist which admits the legality of resistance to its rules? It may envisage

[8] *Ibid.* p. 270.

[9] Esmein has said of this attempt to break down the bounds between law and positive morality, "Law as it is conceived by my esteemed colleague (M. Duguit) is nothing more than custom registered by the legislative will of the rulers; and yet he wants that to be law none the less. Isn't there in all this a confusion between what Montesquieu would perhaps have called the nature and the principle of legislative power?"

"That which causes the legislative power to act and that which leads it to legislate are indeed the given needs and the mean ideas of the population, and it is certain that the best laws are those which are made in advance by public opinion, mature and self-conscious. But that is no reason to mix up needlessly the categories of public law, and to confound the opinion which inspires the law with the authority which declares it. Let the proposal be made to return to the pure system of customary law: that would be clearer." (Introduction, *Eléments de droit constitutionnel*, VI ème ed.)

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the possibility of resistance to its decrees; indeed its provisions of legal sanctions are admissions of the fact that law is rarely absolute, because it does not get itself automatically obeyed.

But unless the law is to be treated as no more than the sum of social forces, there must exist within any society an area within which the interests at issue must be submitted to arbitrament. Legal sovereignty is very far from being merely idle theory. The supineness with which men accept despotism after a period of rulerless anarchy shows how fundamental a need it fulfills. A state in which this area is so unclearly delimited as to permit law to be made by "direct action," cases of which Mr. Laski cites for historical justification with considerable satisfaction, is simply a state in which legal sovereignty is in abeyance, in the strict use of the term, no state at all. If that be made an habitual condition of the body politic, respect for law is gone and a period of feudalistic strife among the interests ensues, with the cycle of degenerative force set up in full swing. As feudalism got nationalism, so lawlessness begets Facismo.

For law, then, it is a theoretical necessity to regard sovereignty as of that "supreme, irresistible, uncontrolled authority," the "*jus summi imperii*" of which Blackstone wrote.[10] But Mr. Laski correctly questions whether or not this is so formidable a power as the mere words indicate. One must, as a matter of fact, examine the sources of this authority in which to find its limitations. Now if, as John Chipman Gray has told us, "the real rulers of a society are undiscoverable," it is still necessary to look for some responsible sovereign in order to give stability to juridical principles. Mr. Laski himself recognizes this as a technical necessity: "It implies only that for the courts the will of the sovereign body, the king in Parliament for example, is beyond discussion. Every judge must accept unquestioningly what fulfills the requirements of the forms of law. But, for the purposes of political philosophy, it is not so abstract and *a priori* a definition we require. What we desire to know is not what has the legal right to prevail, but what does in actual fact prevail and the reasons that explain its dominance. Here,

[10] *Commentaries* I, 48.

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it is clear enough, the legal theory of sovereignty is worthless. Once we are in the realm of actual life it is upon the limitations of sovereignty that attention must be concentrated. What then impresses us is the wide divergence between legal right and moral right . . . "[11]

This is really the gist of Mr. Laski's case against the state as sovereign. It is a question of where attention must be concentrated. And as theories inevitably reflect to greater or less degree the historic setting of the time and the *parti pris* of their author, it is well to notice that the pragmatic purpose of Mr. Laski's declaration, "the theory of legal sovereignty is worthless," comes from a background of judicial decisions like that in the Osborne judgment and the Taff Vale case, reflected by Mr. Laski's Labor party self. The pragmatists, with their fertile emphasis on the necessity of considering the psychology as well as the logic of thinking, are always ready to show us the "reasons" for theories on other grounds than reason. It is air, then, to bear in mind Mr. Laski's very useful affiliation with the Labor party when we consider his claim that "in the realm of actual life it is upon the limitations of sovereignty that attention must be concentrated." One may wonder what the attitude of the Labor party in power will be toward the same sovereignty some of its intellectuals have so often assailed as unjust.[12]

But, bearing in mind that as often as not Mr. Laski's use of pluralistic theories advances the church and other institutions and associations in the state as stalking horses for the unions of the world of labor, one may do well to weigh the proposal that we must discard the theory of legal sovereignty from political theory, in order to grapple with the substances of which it is but a shadow. This is to deny any special justification for the realm of law, any presupposition in its

[11] *Authority in the Modern State*, pp. 40–41.

[12] The men in England who have won the Labor party its present power have no doubt about the permanence of the state and the necessity of its sovereign authority as the source of recognized law. See Ramsay MacDonald's pronouncements on *Syndicalism*, and Sydney Webb's *Proposed Constitution for the Socialist Commonwealth of Great Britain*.

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favor, so to speak. Mr. Laski draws the conclusion from his theory of real corporate personality that the state is only one association among many, not different in kind and therefore not possessed of a special right to command. This sort of reasoning not only involves a *non sequitur* among its logical fallacies—although that is perhaps no objection to it from the point of view of pragmatists; it is also the formal denial not only of the possibility of systematically accepted and applied law, but of the entire realm of political organization under law. It is all very well to say: "Such is the natural consequence that the personality of associations is real and not conceded them by the state;" it by no means follows that these persons all share the political character of the state. Unless there be one group among the many capable of enforcing law, the only means by which the group rights can be maintained is by the appeal to force. While Mr. Laski claims for his doctrine that "like Dewey's philosophy" it is "'consistently experimentalist' in form and content," he says "it denies the rightness of force." Yet in the same passage he says "It dissolves—what the facts themselves dissolve—the inherent claim of the state to obedience. It insists that the state like every other association shall prove itself by what it achieves. It sets group competing against group in a ceaseless striving of progressive expansion."[13] And expects, apparently, that the "progressive expansion" that will come out of this pitting of "group against group in a ceaseless striving" will result from some law of nature. The state is to be made a combatant, and in order to show that one does not believe in "the rightness of force" (if it is the force of established law), it is to possess only the same force that the other strivers have. It is then to be measured for its success in terms of its achievement, which will necessarily be limited to its own survival, for it has by definition no superior power of regulation over the conduct of other groups.

It is curious that Mr. Laski can arrive at a conclusion which strips the majesty from law without seeing that he is rendering the very individuals helpless whom he set out to protect against

[13] *Problem of Sovereignty*, p. 23.

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the absolute sovereignty of the absorptive state. The authority he has taken from law he has given to the pseudo-individuals whom he calls corporate persons. It is true that the state is a corporation among other corporations, but its purpose is one which it alone can serve. 'A community in which there is a general unwillingness to accept the law arrived at by constitutional means, and in which the limits that are put upon corporate interests are those merely of survival in the general conflict, is a community not under law. That is what Mr. Laski's theories lead to in practice, with whatever pragmatic caution he refuse to push them to their logical conclusion as theories. And in such a community the individual grows less and less, the corporation grows more and more, until one, like the medieval church, tends to absorb all. Just as in the case among business corporations, the big fish swallow the little, until society becomes ill from this cannibalistic diet.

The sort of doctrine which denies the inevitable rightness of law is perfectly justifiable so long as that denial means that the individual conscience can not be coerced into ascribing moral goodness to acts of the state—or any other corporation,—simply because that corporation forms a community of interest and of purpose in which the individual reckons himself a member. But because the purpose that such a community, in particular the state, serves, is one larger than the individual act, a man may with good conscience obey laws which do not command his approval separate from their context in the larger purpose. It is this larger purpose that Mr. Laski, in effect, denies. So long as he maintains his denial on the ultimate moral responsibility of the individual, he is on safe grounds; for the way of the absolute state is what James said of the absolute's self: it is like the lion's den of Aesop's fables: *nulla vestigia retorsum.* But when he passes from that moral ultimacy of human personality to the same ultimacy in corporate personality he is destroying the former in seeking to establish the latter.

The state, for instance, does represent a real corporate life; but its only claim to it lies in its moral purpose, the community of the will to the good life among individuals. That is a will which

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can only be realized by intelligent moral coöperation to delimit the blind play of economic interests.[14] Mr. Laski has claimed that the trade-union ideal of the workers "was a wider ideal than that which the state had attained," but in the light of trade-union practice this is a statement which can be challenged, particularly so long as the unions exist chiefly to further the economic interests of the members. The state has always existed to some degree as the *communitas communitatum*, and for that reason it can and does command the moral adhesion of individuals more widely than any particular association because it serves a moral purpose more universal than that of any other. Liberty, in whose name men have so passionately died, can not exist where there is not a law to protect the individual against the enslavement of force. The ideal of the legally sovereign state—let men's actions when that sovereignty is seriously challenged attest it—is an ideal both wider and more intensely cherished wherever races have attained to the political maturity of responsible government, than any other single ideal except that of the liberty which it is the duty of the state to protect. To treat the state as *primus inter pares* is simply to deny to it any functional significance of its own. That is just what Mr. Laski would do, however. Accepting Gierke's demonstration that the state does not create that reality which is the group person of other groups, "We then give to this particular

[14] It was one of Sidgwick's most emphasized contributions to political theory, and after him Mr. A. D. Lindsay's, to insist that the state exists to take moral account of the blindness of economic forces in their deterministic play. T. H. Green's great service to English political theory was to recall it to the tempered idealism of Aristotle, and Aristotle's famous reconstruction of politics about the doctrine of the good life. The state comes into existence in order that man may live, that *Politics* held. But it agreed with Plato that the state continued in existence in order that man might live well.

Mr. Laski professes to take a deal of comfort from the idea that Aristotle was really anticipating the modern pragmatists in politics, interpreting that to mean an attitude of what he sometimes calls political realism. But Aristotle with his insistence on the superiority of the speculative over the practical reason (*Politics*, Book IV, Chapter 14, as well as Chapter 3, Book IV), and on the moral end of the state can hardly be claimed as a supporter for the view of politics, *positive et réaliste*, as M. Duguit has called it, which strips inquiry to the bare recital of facts.

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group (the state) no peculiar merit. We refuse it the title of creator of all else. We make it justify itself by its consequences. We stimulate its activities by making it compete with the work of other groups coextensive with or complementary to itself. As it may not extinguish, so it may not claim preëminence. Like any other group, what it is and what it will be, it can be only by virtue of its achievement. So only can it hope to hand down undimmed the torch of its conscious life."[15]

Either there is the expectation of the return of the Golden Age at the back of Mr. Laski's theories, or he is not particularly concerned with whether or not the lamb-like state will ever rise from where it has attempted to lie down beside these corporate lions. For the propositions that the state may not extinguish, as well as that it may not claim preëminence, are equally incompatible with the rule of law. It cannot allow the groups within itself to be self-governing where the interests of the groups are pushed into the realm protected by the law. The rule of law can not exist side by side with, say, the Ku Klux Klan. The "torch of its conscious life" gutters or is trampled out if the state permits the common law of the land to be thrown into the arena of social strife, for that law is the very breath of its flame. Law represents a certain area of agreement for the settlement of disputes, for the protection of generally recognized rights and the enforcement of duties corresponding to them. Truly enough, as Mr. Laski has demonstrated in the historical studies he has undertaken of clerical and political authority, the law is never static in its formal completeness. But it is a pragmatic error to forget the utility of the formal and systematic character of law, and to insist that because the final sources of sovereignty are extra-legal, there is no place for the theory of legal sovereignty in political science. Social solidarity, to which Mr. Laski's appeal of late has been made to hold society together, is an ideal, not a fact. The state exists to help the realization of that ideal. It can only do so if it represents a will of sufficient permanence and stability to abide by law, that is to accept the sovereignty of the state as the necessary condition of a govern-

[15] *Harvard Law Review*, Vol. 29, "Problem of Sovereignty," p. 426.

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ment in which men may have confidence. Really, after all, the community of purpose which the state represents is only possible upon the basis of reciprocal obligation, and a common willingness to accept the rules of the game. That implies a certain trust in human goodness, and a mutual willingness to put that confidence to the test by voluntarily "casting in one's lot" with a political society.

Mr. Laski sees the matter from a different point of view from that of trust, however. The loyalities of men are various indeed, as he says. At times the basis for political agreement is so slight, as compared with the violence of disagreement, that the real ground for political settlement is lacking. But it is worth noting that this is generally the outcome either of continuous oppression of a part of the community by another part through an abuse of power which revolts men's feeling for justice in law, or of perverting power to serve to establish law by force. Whether it be a numerical minority or majority that so acts, the balance generally is restored against it by the community of resistance that it meets from a society whose normal intercourse depends upon legal stability and constitutional procedure.[16]

The point which Mr. Laski is really raising is, Can there be in the present state of human relationships any sovereign state capable of such unity that its law will be willingly accepted by the associations within it, where its interests conflict with their own? And on a realistic basis, certainly, no view of a cross-section of any actual society would show the modern state completely absorptive of all the lesser associations, their purposes or the loyalties of their members. He has put it in this way: "But sovereign your state no longer is if the groups within

[16] Willoughby and Rogers in *An Introduction to the Problem of Government* have recalled Grote's phrase "constitutional morality" as descriptive of respect for law in a community really politically educated (p. 58, note). Grote, in speaking of the "Athenian Democracy in the time of Kleisthenes, emphasized the necessity for 'a perfect confidence in the bosom of every citizen, amidst the bitterness of party contest, that the forms of the constitution will be no less sacred in the eyes of his opponents than in his own.' Such constitutional morality he called 'a natural sentiment' as exists in the United States. Grote, *History of Greece*, Vol. II, p. 86."

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itself are thus self-governing. Nor can we doubt this polyarchism. Everywhere we find the groups within the state which challenge its supremacy. They are, it may be, in relation with the state, a part of it, but one with it they are not. They refuse the reduction to unity. We find the state, in James' phrase, to be distributive and not collective. Men belong to it; but they belong to other groups, and a competition for allegiance is continually possible."[17]

Gladstone's attack on the Vatican decrees of 1870, Bismarck's *Kulturkampf*, the long struggle of France with *"clericalisme,"* and the failure of the state to exact a complete loyalty to itself—these are matters of history. Mr. Laski points to the successful resistance of unions, notably the English coal-miners' resistance to the demands of the state even during the war, as offering a parallel. He would, no doubt, echo the words of Mr. Gompers, the head of the American Federation of Labor, with real approval: "The law must not interfere with labor," spoken as they were of the injunction issued by Attorney-General Daugherty against the striking railway crafts unions in 1922. As a matter of fact, Mr. Laski has cited the Adamson Eight-Hour and Wages Act of 1916, "railroaded" through Congress by the express threat of a strike on all the railroads by the members of the "Four Brotherhoods," cited it, too, as an instance of the state's helplessness to enforce the so-called "general will" of law against the will of a really powerful "corporate person" within it. In the fact he is unhappily quite right. The growing power of great "blocs," possessed of both voting and economic power, over modern legislative assemblies, proves the fact to be that the state not only dare not act strongly against these interests, but that it is often bullied quite openly into placating them by special favors. The political observers in the American press, for example, are never tired of Jeremiacal lamentations on the passing of political power from the party leaders into the hands of ostensibly nonpolitical organizations: the Farmers' "bloc" through which Mr. Silver has been said to exert a much more

[17] *"Problem of Sovereignty,"* loc. cit. supra. p. 425.

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real political power than its official spokesman, Senator Capper;[18] to say nothing of the "Prohibition" forces and the "veterans" organizations, standing whip in hand over the harried legislators. In general, the opposition of one of these bodies is sufficient to "kill" almost any candidate or any bill; and only President Harding's veto prevented a display of positive strength in the form of a raid on the national treasury for a bonus of several billions of dollars to be dispensed to the "veterans" for "compensation."

These things are true. But does the distribution of *panem ac circenses* to lobbyist organizations, or the impotence of the state before the combined power of either what is called "Capital" or what is called "Labor" constitute a hopeful political trend? May one not suggest that it is the pragmatic attitude of the "economic man" in all the purity of utilitarian individualism, and even more, the same attitude in "corporate persons," which goes far toward furnishing a psychological basis for the growth of a political pluralism founded on interests and not upon the protection of moral responsibility? If German philosophy and politics took one extreme is not this the other? Nor does it add morality to the purely economic character of the struggle to do, as Mr. Laski has done, transfer the unit of plurality from the individual to the corporation. If anything is changed, it is in the

[18] A somewhat extreme presentation of this aspect of politics has been made by the anonymous author of *Behind the Mirrors* (1922), which aims at giving a realistic picture of persons and forces in national politics. The writer makes a very subtle analysis of certain "peaks of reality" which are beginning to thrust themselves up out of chartless surface of the old party systems. He believes that these "interest-blocks" will largely dominate legislation, forming an opportunistic and somewhat feudal balance of power among themselves, which will gradually take the residuary significance out of the party system. The representation of economic interests, without necessarily commanding a legal sanction for their organization, will so undermine the old system of territorial representation as to make it meaningless.

The pronouncements of Mr. Gompers and the leaders of American labor seem to indicate that the Federation of Labor intends to push its political ends through this system of threats to the individual legislator or to the party at large. Perhaps that may explain why the United States Supreme Court has come into so much opprobium with the labor leaders. It is not so amenable to this method of persuasion as are politicians looking to elections.

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direction of a more and more deterministic attitude, one of pure survivalism in such ethics as remain. May not a part, at least, of the growing willingness of groups to exploit the state to their interest, and the corresponding growth in their power to do so, be the result of the growth of an anti-state philosophy, or perhaps the lapse of a real philosophy of the state reflecting itself in the character of the actual sovereign—that intangible thing called public opinion? An escape from industrial feudalism can come only as the escape came from medieval feudalism—through the redevelopment of a sovereign.

We have insisted, correctly, that the actual government is the servant of the constitutionally defined state, not its master. But the servant of the law must be invested with its dignity, if the law is to be obeyed. It is not self-enforcing. Perhaps we could use fewer eulogists of the Constitution and more men of force and integrity in public affairs.

Still it is certain men have not come to feel that the state purpose is weaker in its hold on their loyalty without good reason being afforded by actual circumstances as well as by theory. For one thing, modern business claims greater talents and more time than business did. Recent scandals seem to argue that it claims too many of those entrusted with the offices of state. Much of Mr. Laski's attack on the sovereign state strikes a universally responsive chord in our moral being, too, for we feel that any such absolute sovereignty as is literally set down by Blackstone would be a denial of our individual freedom of choice. If the state in its governmental practice is bad, we will not call it just. We are, as he says, "whether we will or no" . . . . "bundles of hyphens" in our loyalties. "Where the linkages conflict a choice must be made." The absolute sovereignty of the state remains a necessity to law and to judicial interpretation, but as the state is "the community organized for law,"[19] and community itself is a matter of degree, the state can only claim such power as the degree of community endows it with.

[19] See the magistral statement given to the relations between "Law and Political Theory" by Sir Paul Vinogradoff, *Outlines of Historical Jurisprudence*, Introduction, Chapter IV., Vol. I, especially, the definition of the state.

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When all this is pressed home to its uttermost emphasis, however, it falls very far short still of "polyarchism." Where political issues, that is to say the sovereignty of the community of law, are vitally affected, the unity of the state-purpose is made clear. Mr. Laski thinks that, where this allegiance is in question "it is obvious that every great crisis must show its essential plurality." Surely this is not the judgment of modern history. The state-purpose varies in the intensity of its hold upon men's loyalty; but it needs no more than a knowledge of the facts of actual issues in the recent conflicts between, for instance, the general-strike idea and the idea of the rule of law to show where allegiance lies. Among the workers themselves, to a very large extent, the issue has been settled in favor of the state. Witness the Italian communists' fiasco of 1920, then Facismo.[20]

The dangers inherent in the absorptive personality of the economic group, for instance, are equally as great as those involved in the doctrine of what has been called by Hobhouse *The Metaphysical State.* The error involved is as old as steering toward Charybdis in order to escape Scylla. In *The Great Society* Mr. Graham Wallas has pointed out very fittingly the pits into which the anti-intellectualist advocates of group pluralism fall by failing to take note of the beams in their own eyes. The guild-spirit of the Middle Ages had much of the narrow spirit of "closed corporation" in it, as well as much that enlisted men's creative energies.[21] Perhaps it is only by weighing

[20] Many observers have commented on the syndicalistic origin of important elements of the Facisti in the earlier periods of the movement. See Paul Hazard, *L'Italie Vivante,* an expansion of his "Notes sur Italie nouvelle," in the *Revue de Deux Mondes;* also *Communisme et "Fascio" en Italie* by Jean Alazard, Paris, 1922 (ed. Bossard), and *I Facismo e i Partiti politici,* Collection R. Mondolpho, Bologna, 1923 (Cappelli), 4 vols. For its present relations to syndicalism see "Fasismo: Reform or Reaction," by James Murphy, *Atlantic Monthly,* Jan., 1924.

[21] *The Great Society* constitutes Mr. Wallas' effort to put the extremes of anti-intellectualism in their proper light, just as *Human Nature in Politics* had been an attempt at rebuking rationalistic idealism. See also Austin P. Evans, "Problem of Control in Medieval Industry," *Political Science Quarterly,* Dec. 1921, p. 603, for an estimate of the stifling influence of the gilds, shared to some degree by the canonists, upon industry and commerce. Contrast J. A. Penty's *Guildsman's Interpretation of History,* and G.D.H. Cole's attitude to medieval gilds, especially his Introduction to Renard's *Guilds in the Middle Ages,* with the facts collected by

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things in terms of their respective contributions to the good life that the right relation of the state to other associations can be established. And no matter how final be the individuality of this judgment, it is certain that the province of law must be respected.

The Kantian background of Mr. Laski's ethical individualism should have prevented him from taking the pragmatic leap to a pluralism in which ends are weighed in terms only of economic interest, with no escape from anarchy save through the appeal to functional solidarity. From there, is no return to the state as serving a common moral ideal. The path from thenceforth is toward what may be called broadly the Marxian doctrine of economic determinism, in which the state serves the interests of the prevailing power of blind force. And who will say that there are more footprints leading back from that cave of shadows than from the lion's den of the Absolute?

In Mr. Laski's works the incline toward this realm of shadows is detected all along in his attitude toward the social context of force in which the state is set. The will of the state "is a will to some extent competing with other wills, and, Darwinwise [!] surviving only by its ability to cope with its environment."[22] On the other hand, the idea of sovereignty implied by the sovereign state, (which Mr. Laski thinks is being supplanted by this "Get on who can" struggle of group-forces), holds that the maintenance of a government capable of responsible expression of public opinion means the rule of law. But it need not try to carry Austin's province of jurisprudence into the extra-legal realm where opinion is being made. Austin himself made careful note to the contrary.[23] The protection

Mr. Evans, and the warning of *The Great Society* against the dangers of narrow professionalism seem borne out. The discussion of "Occupational vs. Proportional Representation" of Mr. P. H. Douglas, *American Journal of Sociology*, Sept. 1923, is also of interest.

[22] *Problem of Sovereignty*, pp. 13–14.

[23] *Jurisprudence*, Sections 248–254. His description of legal sovereignty is applicable only to parliamentary government under a flexible constitution. Cf. Lord Bryce's *Studies in History and Jurisprudence*, Vol. I, Ch. 3, "Flexible and Rigid Constitution."

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of the freedom with which opinion may be developed and expressed is itself the most cherished right which men require the law to protect. And as for state responsibility, the doctrine of auto-limitation under which the state submits its own acts of government to judicial review is no more "meaningless" than is the ability of the individual to act in accordance with accepted moral norms which he freely chooses to follow. On pragmatic grounds, on the ethics of survivalism, Mr. Laski would be equally right in denying that freedom to each. As a matter of fact, that is what the doctrine of real corporate personality does more effectively to the individual than to the state, although Mr. Laski accuses Jellinek of meaningless theory in talking of auto-limitation on the part of the state. "For to be bound by one's own will is not, in any real sense, to be bound at all," he thinks.[24] How else than as auto-limitation can one explain the origin and development of constitutional states, where the limits of ordinary law are determined by the fundamental control of a constitution.[25]

It is surely a more intelligible view of law to see in it the registration of community of purpose, the expression of an agreement among wills as to the conditions of their political association, than to treat it as the resultant simply of social reactions. On the latter view, which Mr. Laski accepts in effect in his "Translator's Introduction" to M. Duguit's *Law in the Modern State*, it is completely impossible to treat of any other bonds than those of organic social necessity. Purpose has no place in social solidarity which is taken for granted as a fact, and which means only that the strongest rule by right of might.

[24] *Authority in the Modern State*, p. 41. For a statement of the classic doctrine of the State-Person see Jellinek, *System der Subjektiven Öffentlichen Rechte* (Ed. 1892) Pp. 12 ff. "*Die Rechtliche Natur des Staates*. For the doctrine of Auto-Limitation see *ibid*, pp. 201 ff., and Hauriou, *Principes de droit administratif*, 6 ème ed. (1906) pp. 393–395. Mr. Laski's criticism of the doctrine is founded on Duguit's often repeated attack: See *Traité de droit constitutionnel*, 2 ème ed., Vol I. Chapt. 1 *et passim*, p. 307. *Law in the Modern State*, p. 148, and *Souveraineté et Liberté*, pp. 108–110.

[25] In a footnote to *Law in the Modern State* (p. 76) Mr. Laski admits, however, that "This [the state's submitting its acts to the rule of law] is virtually possible under the doctrine of auto-limitation of Jellinek."

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If the state be the expression of social purpose, on the other hand, the doctrine of auto-limitation means that law itself is the vehicle for registering the moral will men bring to bear on politics. Constitutions, whether written, or practiced in the way all its critics have showed the English constitution is, alike present the safeguards of tolerance under which continuous political association is alone possible.

That this is "idealism" does not prevent it from being as well an *a priori* condition of political association without which the mere facts to which Mr. Laski makes his appeal lead only to "a state of nature" in which the conscious direction of the moral will play no part. Mr. Laski, as well as M. Duguit, sees in government only power "exerted in the interests of those who control its exercise . . . . It is the habit of government to translate the thoughts and feelings and passions with which it is charged into terms of the event and deem them the achievement of the State-purpose." Yet he admits that this is "progressively less true." And if it is progressively less true, it is because politically minded societies are becoming more and more clearly conscious of the state-purpose, and more and more effectively able to realize it.

"Regional" movements, the rise of groups of a voluntary nature, have, it is true, exerted a happy pressure upon government to conform to the degree of purpose which it must serve in the national state;[26] there is hope even of translating the wider community of purpose into a substantial international organization of justice, to take national concerns out of that Hobbesian state

[26] Mr. A. D. Lindsay's excellent summary of "The State in Recent Political Theory," *Political Quarterly*, Feb. 1914, makes clear that the old division of society into state and individual can no longer serve as the basis for a modern theory which must take into account the reality of associational life of all sorts. But that is, as he points out, not tantamount to denying a special sphere to the State, or to treating it as *primus inter pares*. Political theory may discard what Dr. Figgis has set the fashion for calling "the Omnicompetent State," "the sum of atomistic individuals", and do full justice to "the inherent rights of associations" without concluding as Mr. Laski does that legal sovereignty is "a barren concept", "without practical utility" (*Problem of Sovereignty*, p. 269).

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of nature on which Lord Bryce made a sorrowful comment in his address inaugurating the Institute of Politics of Williams College in 1921.[27] But this does not mean that the sovereignty of a people over affairs which concern them *domi* is not final as it operates through law. To challenge it in the name of one set of interests (trade unions) is the same fault that Mr. Laski has condemned as its abuse by another ("capitalism"). "No political democracy can be real that is not as well the reflection of an economic democracy," he lays down as a maxim. Yet no economic democracy can escape the necessity of a politically unified sovereignty of law, if it is not to degenerate into political tyranny by an autocracy of interests.

The "principle of federalism" to which Mr. Laski turns to establish this "polyarchism" of groups, sovereign in themselves, must find some common political sovereignty in an accepted state under law, or it must resolve itself into the feudal régime which his bolder speculations anticipate. It is to James that he turns for philosophic justification, again: "Everything you can think of," he quotes, "however vast or inclusive, has on the pluralistic view, a genuinely 'external' environment of some sort or amount. Things are 'with' one another in many ways but nothing includes everything or dominates everything. The word 'and' trails along after every sentence. Something always escapes. . . . The pluralistic world thus is more like a federal republic than an empire or kingdom. However much may be collected, however much may report itself present at any effective centre of consciousness, something else is self-governed and absent and unreduced to unity."[28]

Federalism on this reading, means ultimate pluralism, the absence of a singly unifying relation.[29] So Mr. Laski continues,

[27] *International Relations*, an address to the First Institute of Politics.

[28] Quoted from James' *Pluralistic Universe* in *The Problem of Sovereignty*, p. 10.

[29] Federalism which divides legal sovereignty by the terms of a constitution accepted by all the members of the body politic so created, in practice has tended to increasing unity, as is the case in the United States, or to a sovereignty in fact and in law, more and more completely absorbed by the constituent states, as is the case with the British Empire. The federal government of the United States has tended to gather legislative power to

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"We are urging that because a group or an individual is related to some other group or individual it is not thereby forced to enter into relations with every other part of the body politic. When a trade-union ejects one of its members for refusing to pay a political levy it is not thereby bringing itself into relations with the Mormon Church. A trade union may work with the State but it need not do so of necessity."[30] Let us take this fling at the Osborne Judgment as a test case. Must a trade union "work with the State" wherever its acts assume political character, that is to ask, must it act in conformity with the rule of law, or is it a sufficient source of authority to act upon its own law in its internal affairs, even where those affairs have an external bearing? And suppose it forbid its members to belong to the Mormon Church, for example, while attempting at the same time to enforce "closed shop?" Has the state nothing to say in its character of guardian of rights and enforcer of duties?

The legal status of the individual, as long as law is sovereign, assures the members of all associations equal protection in all the plurality of their relations, so long as they are brought under the uniting bond of citizenship. The law cannot, without surrendering its entire usefulness, admit the claims of nonpolitical associations to create law in its despite. There may be—and there unquestionably is at times—what James would have called "a genuinely 'external'" moral character to

itself (see for instance, Pierce, *Federal Usurpation*), whether through the interpretative powers which the Supreme Court exercises or through the more difficult method of nation-wide amendments to the constitution. De Tocqueville called our young republic "un gouvernement national incomplet" and pointed out the compromise in fact between two theories logically irreconcilable. Some critics go so far as to say that the Civil War and the exigencies of modern business have completed the nationalization of our law to such an extent that federalism mean little more than administrative decentralization when it is not merely the survival of outworn forms.

The evolution of the British Empire has been in the opposite direction, toward a federalism which in fact more and more approaches a confederation. See H. D. Hall's *The British Commonwealth of Nations*, and for the United States, "The Limits of Federalism," by Stephen Leacock, The *Proceedings of the American Political Science Association*, p. 37, Vol. V, (1908).

[30] *The Problem of Sovereignty*, p. 10.

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the acts of trade unions which the law does not reach. The changes in the law of labor disputes in England, which Professor Geldart so well traced show that the opinion which makes law is not insensible to that side of the matter.[31] But for the union to take matters into its own hands where common law rights are at issue is not to be tolerated, any more than governmental infringements of constitutionally guaranteed liberty would be. The strength that is in union may be justly and legally used to prevent the economic exploitation of labor; but when it is put to the use of exploiting the helplessness of a community dependent upon the functioning of essential services, what M. Duguit has given so prominent a place under the title of "the public services which it is the sole duty of the law to secure," then indeed it is M. Duguit and not Mr. Laski who has the right of the matter: the law cannot remain indifferent. If it is called upon by such an actual challenge as Mr. Laski makes, it must establish its right to rule by the force with which it is endowed by the community will to law. M. Duguit's remarks on the "*quelques milliers d'égarés et de criminels*" who "wished, by fomenting a strike on the railroads, to starve out and to ruin the country," and "by creating misery and suffering, to realise some sort of Bolshevist revolution"[32] show that he at least has gone very far with the changing times from that syndicalist leaning of which he was once accused. He still interprets law in terms of social force, but he faces the fact that social force reacts ruthlessly against those who would meet it with force to overturn the stability of ordinary intercourse.

Nothing breeds antagonism like an antagonistic attitude. One need not document the history of the coal strikes in England and America to show that where lawlessness has been invoked, even to such a terrible extent as "the Herrin massacre," which filled the American press in the summer of 1922, the attitude of government has necessarily changed character. At the same

[31] See his "The Law of Trade Unions", *Political Quarterly*, May, 1914.

[32] *Traité de droit constitutionnel*, 2 ème ed., p. IX, Vol. I. The occasion being the attempted general strike of May 1, 1920, engineered by the most radical elements of the French Confederation Générale de Travail.

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time one must look behind the actual occurrences to see whether or not there was not such provocation, by legal inactivity or worse, in the face of intolerable labor conditions, as to make the events almost necessary. The idealist view of the state need never blind its eyes to the pitiable travesty of law that sometimes soils the robes of justice. The report of the Inter-church commission which investigated the Steel Strike of 1919 is proof of the danger that is as real in that direction as is the counsel to violence in the other.[33] And if one may trust the files of *The New Republic* for several years back one may trace a condition of legally winked-at terrorism in West Virginia that could hardly have had any other issue, after what has been described as "the murder" of Sid Hatfield, a miner, by the Baldwin-Felts detectives hired by the coal operators. It appears that these "gun-men," of whom a considerable force were in the employ of the companies operating the mines, enjoyed in some instances the anomalous legal position of deputy-sheriffs, while at the same time their ostensible purpose was "to preserve order" by terrorizing the union organizers who were attempting to "unionize" the coal region in West Virginia. Murders and retaliations developed into a dramatic march of several thousand armed miners on the stronghold of the operators and detectives. A pitched battle was narrowly averted by the governor's intervention, although for some time a state of what amounted to a localized civil war actually existed.

No formal theory of the law can overlook such incidents without remaining merely formal. Industrial conditions are increasingly the concern of the law, and must be. Yet it is throwing the baby out with the bath-water to find that the existence of such crying evils means that the remedy lies in recognizing their necessity and resigning oneself to the rule of no law. What Mr. Laski calls the realistic view in political theory amounts to this: It attacks not the evils themselves nor their cause, but the very sovereignty of law to which it must in the end appeal for remedy, unless it is to rely on some solution like the "Social

[33] See "The United States Steel Corporation," "An analysis of the social consequences of modern business policies, by Kirby Page, *Atlantic Monthly*, May, 1922.

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Myth" of M. Sorel's syndicalistic general strike. Not in abating the sovereignty of law, but in making it flexible to the increased demands a wider state-purpose puts upon it, lies the hope of good government. It is as little possible to contract the sphere of government to that "best government which governs least" of Jeffersonian democracy, as it is to do without government entirely.[34] The pragmatic attitude of intense individualism and distrust of office-bearers which characterized pioneer societies is out of place in so closely knit a unity as is formed by the modern state. And when that individualism is invoked in the name of "corporate persons" with a threat at the back, it can become socially dangerous.

[34] No more striking proof of the changed attitude of government could be asked than the decisions of the Supreme Court of the United States, upholding the validity of the Railway Transportation Act of 1920 on the one hand, and, in the Coronado Coal Co. case on the other, holding "Capital" and "Labor" equally to account.

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THE SOCIALIST MOVEMENT IN GREAT BRITAIN AND THE UNITED STATES

BERTRAM BENEDICT

There is little need to point out the growing strength of the British Labor party. At the recent general elections, it achieved approximately one-third of both the House of Commons and the popular vote; and the fact that at the preceding election it had rolled up twenty-two per cent of the House and thirty per cent of the ballots proves that its recent achievement was not merely occasional. Throughout Great Britain there is thoughtful consideration as to whether Mr. J. Ramsay MacDonald will prove as able a prime minister as he proved a leader of His Majesty's Opposition.

What may not be so widely appreciated is that the British Labor party is fundamentally, in fact no less than in theory, a socialist party. At its annual conference held in June, 1923, the following resolution was proposed:

"This Conference . . . asserts that the supreme object of the Labour Party should be the supersession of Capitalism by the Socialist Commonwealth . . . ;" and with hundreds of delegates representing several million members, the resolution was passed unanimously. Indeed, as the chairman, Sidney Webb, remarked in putting the resolution to a vote, it was largely unnecessary, for everyone in Great Britain recognized that the British Labour party was a socialist movement.

At the same time, the Socialist party of America has steadily declined in power until in most sections of the United States it is functioning, if at all, as a mere shadow. Its leaders no less than its rank and file have confessed impotence and political bankruptcy, and are busy seeking amalgamation with or absorption into other radical or quasi-radical political bodies. The reasons for this illuminating contrast in fortunes between the

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socialist movements of the two countries fall roughly under two headings—the first due to differences in economic conditions, and the second to differences in political ideology and strategy.

Under the first head comes at the very outset, the startling contrast between the welfare of the organized workers in the two countries. Even though, from the socialist point of view, the average American skilled trade unionist may be exploited by the capitalist system, yet he has indisputably become removed from the actual poverty line. It is nothing short of ridiculous to go to the American carpenter, bricklayer, clothing cutter, locomotive engineer, compositor, and tell him that he has a whole world to gain and nothing to lose but his chains. If he be an able worker and a member of a well organized trade union, he may have already gained a tolerable security of employment; and he may stand to lose several hundred dollars' worth of Liberty bonds or other securities, a savings bank account, some household furnishings, a life insurance policy, his wife's fur coat and diamond pin, and, if he live in a smaller town, a Ford or not inconceivably a two-story frame house. Whereas, as the report of the Sankey commission revealed, even so well organized a body of workers as the British miners live in misery, fear and instability; and the average British worker, the skilled to only a degree less than the unskilled, remains the proletarian to whom Marx and Engels addressed the *Communist Manifesto*.

In the second place, the workers form the bulk of the population of Great Britain. If as a class they can be converted to the socialist cause, a show of hands will return the Labor party to power. Even the English rural population, traditionally disinclined to question the superiority of the ruling class, is not rendered altogether sterile soil to socialist propaganda by ownership of land. Indeed, the large class of British agricultural laborers seems to be becoming almost receptive to the Labor party's cause. Whereas, in the United States the census of occupations shows almost as many persons engaged in agricultural pursuits as in manufacturing and mechanical, and the additional proportion of the working class in other classifications such as mining and transportation is more than counterbalanced

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by those in such classifications as trade and professional service. And, despite the growth in the number of tenant farmers and agricultural laborers in this country, the average American farmer remains a petty capitalist, owning his land, selling its products, hiring employees, and hence generally unattainable by the kind of political campaign which gathers the industrial worker into the socialist fold.

Moreover, the road to the socialist goal in the United States is blocked by constitutional obstacles which do not obtain in Great Britain. With a majority of the House of Commons, the British Labor party may proceed with its program; but a socialist program in this country would unquestionably require constitutional amendments realizable only through the assent of thirty-six states. And in 33 states more than half of the population is rural; in 27 states, more than sixty per cent; and in 17, four more than enough to block any proposed amendment to the Constitution, more than seventy per cent of the population is classified as rural.

Under the heading of differences in political ideology and strategy may be placed foremost the fact that British labor long ago broke away from the Marxian cast of thought. As Sidney Webb insisted at the 1923 conference of the Labor party, the father of British socialism is not Karl Marx with his economic determinism, but Robert Owen with his gospel of human brotherhood. And although the Socialist party of America has broken more and more with the Marxian analyses, yet on the whole it has come to its socialist convictions by pondering Marx, at first hand or second hand, and then retaining as much of him as possible.

The result has been that the mental processes of British labor are chiefly inductive. It delves into the actual problems which confront it and shapes its program in accord therewith. It thus satisfies the average voter's demand for concreteness by discussing chiefly the ways in which its proposals would work out. Whereas the mental processes of American socialism remain chiefly deductive, and have left the average American voter cold by more detailed attention to the disease of modern in-

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dustrialism than to its remedies. Thus, stripped of its complicated reasoning, the program of socialism may be not unfairly summarized as government ownership or control, with workers' management: and on this issue, the average American voter has strong opinions. He is firmly convinced, for instance, that government operation of the railways was a failure during the World War. But instead of arguing statistically on the size of the government guaranty to railroad owners during the war, on the war-time need for shipping supplies and troops to France in the quickest instead of in the most economical way, on the increase in rates granted the roads when private control was reassumed, on their failure even then to earn as much as the government had paid them during its period of operation on the savings inherent in ending competitive solicitation and in unifying equipment and terminals, socialist campaigns in the United States have urged that the workers should get all they produce. For most voters, the issue has thus been let go by default.

In the second place, and as a corollary of this condition, it is largely of foreign-born that the American socialist movement has been composed. Whatever plausibility might adhere to the Marxian analyses was more applicable to the rigid economic and social stratification of industrial Europe than to the United States, where economic development has been so tumultuous and where comfort, if not affluence, has been so generally available to the man of ability that economic and social class ties have remained largely fluid. It is, therefore, the immigrant rather than the native mind to which the socialist cause has made successful appeal in this country—even the delegates to the national Socialist convention in 1920 were foreign-born to the extent of about forty per cent; and the American socialist movement has thus had arrayed against it all the native prejudice against the foreigner. There is nothing to be gained by blinking the fact that the Socialist party of American has been to a great extent in Jewish hands, nor that an increase of anti-Semitism was one of the inevitable results of the war. The man in the street was thus easily induced to believe that the socialist move-

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ment was but another mechanism for overthrowing the Christian religion, the family and Nordic morality, and for placing the world under the domination of Lenin and Trotzky, or the international Jewish bankers, or the Seven Wise Men of Zion, or any other bogy which Mr. Henry Ford and the Ku Klux Klan might conjure up before a credulous public.

This Marxian cast of thought has been responsible, also, for the inability of the American socialists to resist the temptation to depict their movement as a revolutionary one and themselves as revolutionists. For revolution, fortunately or unfortunately, has lost the high caste it once enjoyed in America, as is evident by the kind of patriotic addresses now being delivered to, and patriotic memorials being presented by, such organizations as the Sons and Daughters of the American Revolution. After all, the socialist program is an extension rather than an innovation. It represents the feeling for installing into the economic field the regulation and coördination which have already ended anarchic individualism in the field of public service. American socialism would be infinitely nearer its goal today if it had stolen a leaf from the book of Bernard Shaw and had pointed out that the opponent of socialism leaves his club to walk upon a socialist pavement lit by socialist street lamps, passes a socialist school facing a socialist park and greets a socialist policeman, crosses a socialist bridge over a river traversed by socialist ferries, watches a socialist fire department put out a fire by means of water from a socialist waterworks, and arrives home to tell his wife that it had been agreed at the club that socialism was a beautiful theory but could never work out in practice.

A fourth grave weakness in the socialist method of approach in the United States has already been indicated. It consists in the neglect to make any effective appeal to the American farmer. Centered in the congested quarters of large cities, socialist campaigns seem to have proceeded without reckoning that the balance of power in American politics is held by the farmer. Accordingly, it is hardly the latter's fault if he labors under the impression that a socialist and an anarchist are one and the same

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thing, that socialism somehow would undermine the family, the home, the church and the Constitution, and that the socialist movement as well as the trade union is his enemy to no less an extent than Big Business, in general, and Wall Street and the railroads, in particular.

It is this necessity for winning over the farmer which should have warned the Socialist party of America to concentrate on the effectiveness of its proposals in remedying modern-day evils rather than on the causes of those evils. It is true that Socialists here as well as abroad realized years ago that the program of government ownership was inapplicable where a large farming class was obsessed with a desire to own its land—the first and greatest of the stumbling-blocks against which the unadulterated communist program in Russia stubbed its toe. It is equally true that the later Socialist platforms threw sops to the agricultural vote in the shape of state grain elevators, state banking and state cold storage plants. But the fact remains that the bulk of the socialist appeal in the United States was couched in terms such as to leave the farmer apathetic, if not hostile.

Although he might have been exploited by the same forces which were exploiting the working-class, he remained a small capitalist, largely owning the tools by which he produced, usually hiring labor and anxious to pay it as little as possible, and selling his product at as high a price as he could command from the consumer. He could hardly be expected to manifest any intense interest in the fact that there was a class struggle between the proletariat and the bourgeoisie, so that the proletariat had to develop class-consciousness; nor in the fact that the worker produced more than he received, although entitled to the full product of his toil; nor, to be specific, in the fact that when he paid sixty dollars for an agricultural implement, the workers received therefrom only thirty-five dollars but were entitled to twenty-five more. It made little difference to the farmer where the sixty dollars went; his interest would be aroused only if he were shown how under socialism he could buy that implement for forty-five dollars.

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Accordingly, the most fruitful tack for American socialism to follow would have consisted in abandoning its rehearsal of workers' wrongs and in emphasizing, rather, the comparative efficiency of a socialist over a capitalist system. Such an emphasis would have analyzed, not abstractly, but concretely, the wastes of competition, of lack of coördination between industries, of overproduction, of strikes and lockouts so far as they are due to private control of industry, of marketing through middlemen, of squandering the productivity of the laborer and of the other inherent weaknesses of capitalism on which the socialist case rests. Negatively, such an emphasis would have met the common indictment of government ownership and control—namely, that it is prone to wastefulness, graft and inertia.

To be specific, in a time of a great coal strike, a socialist movement in touch with American psychology would not have wasted its breath in charging Prussianism in West Virginia; but would have shown the American public how much cheaper coal would be if the more productive mines were run on full time and the less productive ones shut down, if a smaller number of miners were worked full time and the younger miners and those without dependents diverted into other occupations, if coal cars and receiving depots were pooled, and if coal hauls were shortened by ruthless supplying of markets from the coal fields nearest them.

Similarly, in a time of a great railroad strike, the public which turned a deaf ear to an arraignment of Mr. Daugherty's blanket indictment against the rail strikers would be prone to turn an attentive ear to a statistical explanation as to how rail rates could be lowered if an army of clerks and bookkeepers were not kept busy apportioning the costs and returns of long freight hauls among different roads, if traffic were always sent the shortest distance between two points, if passenger terminals and ticket offices and freight terminals were consolidated and thus lessened in number, if competitive advertising and solicitation were eliminated, if industry were stimulated in winter and depressed in summer so that the farmer could enjoy an abundance of freight cars and farm labor in the summer, if strikes were

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made less likely by giving rail ownership to the whole people through the government and rail operation largely to the rail workers themselves.

Likewise, in a time of great housing shortage, there was little to be gained for socialism by indicting the rapacity of landlords. There was much to be gained by indicating, not in general but in concrete terms, how the system of production solely under the impetus of profit-making was resulting in the production of limousines rather than of houses, and how only under a socialist system could production be so guided as to satisfy the call for necessities before meeting the demand for luxuries.

Fifth among the many other points of difference, which might be cited between the advancing British socialist movement and the declining American socialist movement, would be the latter's failure to rally around its standard that section of labor which is already organized in the industrial field. Because of the fact that the working class, as the term is socialistically used, does not comprise in America, as it comprises in Great Britain, the majority of the population, I doubt if it could ride to power here if it were, as there, primarily the political arm of labor dually organized. For however bitterly the British anti-socialist may dilate upon the tyranny of labor, he must remain subconsciously aware that it is the tyranny of the majority. Whereas a socialist movement wielding power in America primarily as a labor movement would always be conceived by the farmers and urban middle class as representing the tyranny of a minority. For that reason, it seems to me that a successful socialist movement in the United States would have to be a combined movement of farmer, middle class and labor. It would have to emphasize, accordingly, not only the greater benefits of a socialist system to the great bulk of the population, but also the ethical appeal of a coöperative rather than an exploiting system, the ethical appeal to which American political life is peculiarly susceptible.

Nevertheless, the kernel of the movement would probably have to consist of labor, especially that labor which had become conscious to the point of organization in the industrial field; and

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no other testimony is needed to convict the Socialist party of America of woful ineffectiveness than the fact that after more than twenty years of ceaseless, often heroic, campaigning, it never managed to poll a vote one-fifth as large as the paid-up membership of American trade unions. Indeed, to bear out a point made above, the few unions which have officially supported the Socialist ticket have been almost without exception those in which the foreign-born predominated and which were thus all the more likely to repel the others.

Finally, the fact that socialism was growing in Great Britain and seemed to be butting its head against a stone wall in the United States was doubtless responsible for the inability of Russia to split the one movement as it split the other. With British socialism steadily, if gradually, proceeding toward the seat of power, there was little reason why any of its supporters should be captivated by the siren of a dictatorship of the proletariat. Whereas in the United States it was inevitable that thousands of discouraged socialists, "tired radicals," should save themselves from self-indictment by blaming their failure, not on their own political ideology and strategy, but on the very theory of political action by which for so long they had differentiated themselves from the anarchists, the syndicalists and the I. W. W. no less than from the governing machine of the American Federation of Labor. With this schism thus created within its none too numerous ranks, the rout of the official socialist movement in the United States was complete. If it should ever rally in the attempt to get where the socialist movement is today in Great Britain, it will have painfully to grope back to the latter's beginnings of several decades ago and work out its salvation generally along the lines that British socialism has followed.

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TEACHING CITIZENSHIP TO THE FILIPINOS BY LOCAL SELF-GOVERNMENT

O. GARFIELD JONES

University of the City of Toledo

At the close of the Spanish-American War President McKinley sent word to a lawyer in New York City that he wanted him to be secretary of war. The lawyer sent word back to the President that he knew nothing about the army. The President replied that he had plenty of officers to look after the army, but for secretary of war he wanted a man who could work out a system for the government of our insular possessions. The lawyer accepted the cabinet position and in a short time the new secretary of war formulated the now famous McKinley Instructions to the second Philippine commission, and thereby established the policy for the government of the Philippine Islands. Twenty-two years of development under this policy bear testimony to the political genius and high statesmanship of Elihu Root.

The gist of this policy was that we should train the Filipinos to govern themselves. The task set for this paper is to explain the part played by the local governments in training the Filipinos for self-government. Any discussion of autonomy for the insular government must necessarily be mere academic speculation unless the parties to the discussion have some comprehension of the progress achieved in training the Filipinos for self-government in local affairs. And certainly there has been no scientific treatment of the local government side of our Philippine policy in the innumerable books and articles published in America on the Philippine problem.

However, President McKinley and Secretary Root did have a vigorous appreciation of the importance of local government in the development of effective citizenship. One section of the McKinley Instructions to the Second Philippine Commission reads as follows:

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"Without hampering them by too specific instructions, they [the Taft commission] should in general be enjoined, after making themselves familiar with the conditions and needs of the country, to devote their attention in the first instance to the establishment of municipal governments in which the natives of the islands, both in the cities and in the rural communities, shall be afforded the opportunity to manage their own local affairs to the fullest extent of which they are capable and subject to the least degree of supervision and control which a careful study of their capacities and observations of the workings of native control show to be consistent with the maintenance of law, order and loyalty,"

In this insistence on the paramount importance of local government in the development of political ability among the people, Secretary Root was only restating the conclusion of those two great students of American democracy, Alexis de Tocqueville and James Bryce.[1]

The Philippine municipality is the lineal descendent of the Roman *municipio* and, as such, it is the fundamental territorial unit, like our southern and western counties, with a political organization like our American cities under the mayor and council plan. And, although the councilors are elected at large like our county commissioners, the council at its first meeting assigns each councilor to a separate subdivision of the municipality, which corresponds to a township in rural communities or to a ward in urban communities. While these Philippine municipalities, numbering close to a thousand, are incorporated, the majority of them are rural rather than urban in their social

[1] "Local assemblies of citizens constitute the strength of free nations. Municipal institutions are to liberty what primary schools are to science. They bring it within the people's reach, they teach men how to use and how to enjoy it. A nation may establish a system of free government, but without the spirit of municipal institutions it cannot have the spirit of liberty."

On this same subject, the Honorable James Bryce says, "Nothing has more contributed to give strength and flexibility to the Government of the United States, or to train the masses of the people to work their democratic institutions, than the exercise everywhere in the Northern States of self-governing administrative units, such as townships, small enough to enlist the personal interest and be subject to the personal watchfulness and control of the ordinary citizen."

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and economic make-up. Since the American occupation in 1899, these municipalities have been classified into first, second, third, and fourth class, depending on the population, with a larger number of councilors for the more populous ones.

During the Spanish era this formal municipal organization was found among that ninety per cent of the total population which had been christianized, and occupied all the lowland region except that part of the archipelago in the south which is inhabited by the Mohammedans. Prior to the Spanish revolution of 1896 these municipalities had had some years of experience with a municipal council and a municipal executive chosen indirectly by a very restricted electorate. But this municipal political organization was, in the main, vitalized and controlled either by the local Spanish priest or by the local Spanish military officer. The United States army authorities took over this directing control in local affairs during the period of military occupation. But as soon as civil government was established in 1901, a large measure of autonomy was given to these municipalities.

The key to the local government policy followed is that we tried to teach the Filipinos to run their local affairs, at the same time that we were modifying the form of the local government so that they could run it.

In 1899 the municipal executive, later called president, was chief executive, treasurer and judge. He abused his power by tyrannizing over his fellow-citizens, and he collected funds for the insurgent forces in the adjoining mountains instead of collecting taxes to run the municipal government. In 1900 the fiscal and accounting functions were taken from the municipal president and given to a new officer, the municipal treasurer, who was elected by the municipal council. In 1903 this local treasurer was taken entirely from the control of the municipality, placed under civil service rules, and was appointed from an eligible list by the provincial board, which was the governing body of the province consisting of a Filipino governor and two American administrators. Then the municipal treasurer was made a deputy of the provincial treasurer, who at that time was

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an American, and this provincial treasurer was required to keep a close check on the accounts of the municipal treasurer's office.

However, this arrangement did not entirely solve the problem of providing the municipalities with an adequate system of accounting, because it requires some education and training to keep accounts, and some of the outlying municipalities had no persons qualified for this work and no money to hire an accountant from one of the more literate communities. This problem was solved by a series of laws which permitted the municipal treasurer to serve also as municipal secretary, deputy provincial treasurer, and postmaster in the poorer municipalities where his fiscal and accounting functions required only a part of his time.

In 1908 an attempt was made to provide more municipal autonomy, and one of the steps taken was to restore to the municipal council some control over the municipal treasurer. The procedure followed was similar to that of the municipal code of France, in that the municipal council nominated three candidates from the civil service eligible list, and then the provincial treasurer appointed one of these three. In 1916, however, when Filipinos occupied most of the provincial treasurerships, when the executive secretary at Manila was a Filipino, and when both houses of the insular legislature were controlled by the Filipinos, the municipal council was again deprived of its control over the municipal treasurer. The new law authorized the provincial treasurer to appoint the municipal treasurer directly from the civil service eligible list.

Between 1900 and 1908 an excellent audit system was developed within the Philippine government, entirely separate from the treasury department, with a separate audit office in each province, and a highly-trained corps of traveling auditors who personally examined the accounts and funds of all municipal treasurers at irregular intervals in much the same manner as our bank examiners examine the accounts of our national banks. The insular auditor at Manila had control of all government accounting forms, and the accounting system was designed to facilitate a complete audit.

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The necessity for such a system of accounts and audit was evidenced by the series of embezzlements of government funds during the first years of the American occupation. Between July 1, 1902 and November 9, 1903, seventeen American officials in different parts of the Philippine Islands got away with considerable sums of government money. There were embezzlements by Filipinos, also, but this occasioned no remark owing to the overshadowing effect of the crookedness of American officials who had been reputed to be the antithesis of the Filipinos in matters of honesty. All seventeen of these Americans were tried and punished; some of them were sentenced to twenty-five years imprisonment. While these convictions were a terrible blow to American prestige, there was a compensatory rise in the respect for American courts and American justice. Crookedness among high officials was no novelty to the Filipinos, but the punishment of such crookedness with long terms in prison was a novelty indeed.

Shortly after this audit system was perfected three successive municipal treasurers were caught using public funds for gambling purposes in Capiz Province, where I was living at that time. This one illustration may show the need for and the effectiveness of the system in municipal affairs. A statistical statement of the number of treasurers caught misusing government funds may be found in the annual report of the governor general.

Misuse of government funds is usually, if not generally, due to an inadequate system of accounts and audit; consequently, the Philippine system of accounts and audit has done much to remove one of the great obstacles to the development of honest and effective citizenship. Who can estimate the saving to American cities in money and in self-respect, had we had some such system of accounts and independent audit in operation during the last century? If a good government makes it easy to do right and hard to do wrong, then the Philippine system of accounts and audit has done much to make good government in the municipalities of the Philippine Islands.

The treasurer in the smaller municipalities is a greater force for progress in these backward Philippine communities than any

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one official in American counties or cities. He corresponds more to the town clerk in the smaller English cities. As secretary, treasurer, accountant, auditor, postmaster, and collector of insular, provincial and municipal taxes, he is almost invariably the best educated man in these outlying municipalities. He is the repository of both official and community custom and tradition. His permanent tenure gives him a practical knowledge of the temper of the local community, while his official and extra-official contact with the higher authorities keeps him familiar with the latest improvements in official procedure and municipal development in all parts of the province and the archipelago.

The municipal council was not a new institution among the Filipinos, because some sort of deliberative council is to be found in all Malay villages, regardless of their state of civilization. The election of this council by direct vote of the people was a new departure, but in the main the new method of selection chose the same individuals who had been community leaders in previous years. It is only recently that the younger Filipinos from the public schools have been able to oust the elders from community control, and inaugurate programs of municipal development that are modern and sometimes radically impractical.

Prior to 1903 the Philippine municipal council was quite independent of the provincial board, but the very strong tendency of these councils to spend all municipal funds for salaries and to pass ordinances in direct conflict with insular laws caused the passage of an act in May 1903, which gave the provincial board the right to veto municipal ordinances and executive orders of the municipal president that were in conflict with general law. Even this act did not prevent the passage of occasional ordinances or the issue of occasional executive orders that were put into effect without being submitted to the provincial board for approval; consequently, in 1907 provincial supervision was made more complete by an act of the Philippine commission requiring that all municipal ordinances and all executive orders be serially numbered and sent to the provincial board within

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thirty-six hours after their passage. In case the municipal authorities were dissatisfied with the reasons for the veto by the provincial board, they could appeal to the governor general for a final decision.

Another important limitation on the power of the municipal council was that part of General Order Number 40 of the Military Governor in 1900 which has been reënacted in every issue of the municipal code since that time. The clause reads in part as follows:

"There shall not be expended during any calender year for salaries and wages of municipal officials and employees, of every description, excluding those employed on public works, in municipalities of the first class more than fifty per centum, in municipalities of the second class more than sixty per centum, in municipalities of the third class more than sixty-five per centum, and in municipalities of the fourth class more than seventy-five per centum, of the annual revenues accruing to the municipal general fund during said calender year. . . . . Providing however, that the provincial board, by and with the approval of the Governor General, may by resolution authorize any incorporated municipality to exceed the foregoing percentages upon such conditions and under such limitations as may be prescribed by such resolution."

The administrative code of 1917 changed this section only to the extent of giving the final approving authority to the Filipino secretary of interior instead of to the governor general. This slight change in the administrative law was one of the forerunners of the responsible-ministry controversy. The same sort of development took place in the other municipal offices. After the combination of ignorance and autonomy made a failure of law enforcement, the municipal chief of police was made a civil service employee under central supervision, and the justice of the peace became an insular appointee under the direct supervision of the insular attorney general on the one hand and the provincial judge on the other. The office of justice of the peace came to the Philippines from Spain in the eighties, but it was not thoroughly established at the time of the revolution against

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Spain in 1896, and was not provided for by the municipal code established by the American military governor in 1899. It was reëstablished, however, in 1900 when the municipal executive abused his combined executive and judicial powers as mentioned at the beginning of this paper. In spite of these steps toward judicial and administrative centralization, the municipal electorate continued to elect the municipal council and the municipal president, and these officials continued to enjoy considerable power. Thus the necessity for at least a minimum of law enforcement, and for reasonable efficiency in accounting administration did not prevent the local determination of local policy, and that, after all, is the essential feature of local autonomy. Consequently, the Filipinos have been learning, little by little, the great lessons of democratic self-government by the popular election of the municipal legislature and the municipal executive.

Improvement in elections and the evolution of the election law indicate better than any other one activity the development of political consciousness among the Filipino people. The simple election procedure of 1899 worked because the American army officers then in the municipalities made it work. The new election law of 1900 provided that an elector must be a male citizen twenty-three years of age, and either a former official under the Spanish régime, a taxpayer to the extent of fifteen dollars a year, or a person who could speak, read and write English or Spanish. This age limit was reduced to twenty-one years in 1916.

The first election under Filipino control was in 1903, but the records of that year are too fragmentary to show how far short it was of a popular election. In the next election, however, that of 1905, one-half of the municipal elections were contested in whole or in part, and about one-sixth of all the elections were wholly or partially annulled and special elections ordered. The situation following this election may be illustrated by citing the conditions in the municipalities of one province, that of Oriental Negros. Fifty-nine per cent of the councilors elected were not qualified under the law; nevertheless they took the oath of office. In only two of the fourteen municipalities were all of the elected

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officers qualified. In two other municipalities none of the elected officers were qualified. In six others the majority were ineligible, and in still another just one-half were eligible. The provincial board had confirmed all of these elections. These ineligibilities came to light because of a protest against the election of the provincial governor, who at that time was elected by the municipal councilors of the province.

As the result of these wholesale election scandals the election law was further revised. From this time on, however, the elections have been conducted more satisfactorily, partly because of the rapid increase in education in all parts of the archipelago, partly because of the improvement in the election law, partly because of the increased experience in popular elections by both the voters and the election officials, and partly because of a general elevation of public opinion in the matter of fair elections. The Filipinos were beginning to have faith in democratic government.

There was another wave of election frauds in 1916, but fortunately the Philippine judiciary sentenced the guilty parties to fines and imprisonment, and the Philippine supreme court vigorously upheld the action of the lower courts. Most unfortunately, Governor General Harrison nullified the action of the courts in these cases by pardoning these guilty election officials. In the opinion of many of the best Filipinos, as well as the Americans, this was the worst act of Governor General Harrison's administration. It was an act in direct contravention of our policy to train the Filipinos for democratic self-government.

A detailed study of the election data of the last twenty years, to show how the educated voter is assuming control of Philippine politics, is not possible in this brief paper. However, the data may be summarized as follows: The number of registered voters increased from 2.4 per cent of the population represented in 1903 to 7 per cent of the population in 1922. Of these registered voters about 96 per cent actually vote. It is not easy to ascertain what per cent of those who could vote do not register. But of those who do register it is evident that there is less indif-

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ference on election day in the Philippines than in the United States. The number of voters qualified under the literacy test in 1905 was only 40 per cent of the total, whereas in 1916 the literate voters made up 57 per cent of the total and, in 1919, 78 per cent of the total. Stated in more general terms, the electorate up to 1905 was largely the aristocratic and property-owning class, and this class was only about half literate. Whereas, in 1922, the electorate consisted mainly of products of the Philippine public schools of the last twenty-three years.

This last statement leads to the fundamental proposition that political evolution in the Philippines has been conditioned upon the general education of the masses by the splendid work of the Philippine public schools. While public opinion may develop by word of mouth in a small country with continuous territory, it is only by means of newspapers and written correspondence that the municipal voters in the isolated valleys of the Philippine archipelago can learn about their common problems, and evolve an intelligent public opinion as to the solution of these problems. With close to a thousand municipalities scattered over a hundred islands that dot the Pacific for a thousand miles north and south, and five hundred miles east and west, surely it is obvious that a high degree of enlightenment in a few urban centers like Manila, Cebu, and Iloilo would not suffice to maintain a democratic government for the Philippines as a whole. It is for this reason that the most poverty-stricken and isolated municipalities have been provided with practically the same facilities for primary education as the wealthier and more populous urban communities. I have already explained how these smaller municipalities have been provided with an educated and capable municipal treasurer.

The use of popular lectures on civic affairs, the organization of school societies for debating and parliamentary drill, the encouragement of organized athletics to teach coöperation and fair play, and the utilization of other educational devices to prepare Filipino children for effective citizenship can not be described in this paper on local government, although these educational factors have been the *sine qua non* of the local self-

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government already achieved. As stated in the beginning, Mr. Common Citizen in the Philippines was being taught local self-government, at the same time that the local government was being modified so that Mr. Common Citizen could run it.

There has been talk about Filipinization of the Philippine service during the last fifteen years. Most of this discussion has suffered from lack of perspective. The greatest act of Filipinization was in 1901, when Governor General Taft completely Filipinized the municipal governments. And the greatest achievement of the Philippine government since that time has been the organization of the municipal government, and the development of political ability among the Filipino citizenry in such a way as to make possible the degree of effective local self-government that obtains today in the Philippine Islands.

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LEGISLATIVE NOTES AND REVIEWS

EDITED BY WALTER F. DODD

Governors' Messages.[1] The reader of these messages will find it difficult, if not impossible, to select any single subject which has been presented by a majority of the governors with such emphasis as to entitle it to be called the outstanding field of recommendation. Perhaps taxation received a greater share of their attention than any other subject of legislation. The messages of Governors Flynn, Smith, and Cox contained numerous references to their messages of last year, and the new governors of Kentucky and Georgia viewed the problems of their respective states in much the same light as did their predecessors. Legislatures in these states evidently did not prove satisfactorily responsive to executive suggestions.

The enactment of a fair tax system was considered by Governor Walker of Georgia as the first duty of the legislature. He proposed in a special tax message the repeal of the present tax equalization law, the adoption of the Kentucky system of classification, and a small tax on incomes not otherwise taxed, as well as a specific tax on all luxuries and an increase in the tax on insurance companies. He favored an act which would make unenforcible in the courts any note, mortgage or other evidence of debt which did not bear a stamp of the tax collector, indicating that the paper had been returned for taxation. The state tax commissioner had declined to organize a force of field men to enforce

[1] The messages of the following governors are reviewed: Channing H. Cox, Massachusetts; William S. Flynn, Rhode Island; Alfred E. Smith, New York (several special messages in addition to regular message); George S. Silzer, New Jersey (annual and budget messages and another on education); Albert C. Ritchie, Maryland (inaugural address included); E. Lee Trinkle, Virginia (also message to extraordinary session, February, 1923); W. J. Fields, Kentucky; Thomas G. McLeod, South Carolina; Clifford Walker, Georgia (inaugural, June, 1923, special tax message, and message to extra session, November, 1923); Cary H. Hardee, Florida, 1923; Lee M. Russell, retiring governor, and Henry L. Whitfield, incoming governor, Mississippi; Pat M. Neff (series of messages to three called sessions, 1923). Governor N. E. Kendall of Iowa called a special session of the legislature to meet immediately after the regular session to complete the codification of the statutes. An adjournment was taken until December, 1923.

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the tax laws because the law provided for their payment on a commission basis. In some counties it seems that thirty-three to fifty per cent of the automobiles were without license tags, and in some cities the telephone directories listed more professionals than were on the tax books. A limit upon the county tax rate was urged. The report of a nonpolitical tax commission to the special session largely supported the governor's recommendations.

Governor McLeod of South Carolina also proposed a tax upon luxuries, especially soft drinks, chewing gum, and cosmetics. Inspection taxes upon oils, hay, and paints were suggested, along with the adoption of a scheme of classification which would furnish through indirect taxes the entire revenue of the state government, accompanied by the repeal of the three-mill constitutional levy. A relief commission appears to have been authorized to exempt certain objects from taxation, and to have relieved the moving pictures and the theaters from the operations of the law.

Governor Russell of Mississippi proposed a four-cent tax on each gallon of gasoline, the graduation of the privilege tax on lawyers, and the removal of the exemption of professional libraries from taxation. He lamented the fact that the nonresident holders of $111,000,000 in the bonds of the state and its subdivisions paid no state taxes and asserted that the $150,000,000 on deposit in the banks of the state paid not a penny of tax. The income tax law was pronounced a dead letter, and the granting of authority to the officials to investigate the taxpayers' books and accounts was suggested, along with assessment of incomes if the taxpayers failed to make returns. Governor Whitfield of Mississippi recommended an increase in the privilege tax on the manufacture of soft drinks, and a tax on the sale of tobacco and soft drinks, a tax on all admissions to places of amusement, a higher tax on gasoline, a special tax on automobiles, the remodeling of the income tax law to correspond to the federal law, a severance tax on lumber manufactured in the state and on logs shipped out of it, and the application of the inheritance tax in a graduated form to all transfers made within five years of death.

Governor Hardee of Florida would have a constitutional amendment permitting classification of property for taxing purposes and a stricter state supervision of assessment and equalization in order to bring millions of property values now escaping taxation within the burden of the taxes.

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Through a reduction by half in the tax rate on intangible personal property in Virginia the state lost almost half a million in revenue for the first year under the new rate, but Governor Trinkle reported that money was made easier to obtain for construction and improvements within the state. He pointed out that the counties and other local units, which failed to secure equalization within their boundaries, suffered greater inequality in the payment of local taxes than in the payment of state taxes on account of the greater amount of the former. He believed the county revenue commissioners should be made appointive and the number reduced to one in each county. This change seems to require an amendment of the constitution.

Governor Neff of Texas presented an extensive program of tax legislation: A special tax upon the producers of crude oil, the refineries, and the pipe line companies; a tax on corporate franchise privileges proportionate to their value; an elaboration of the inheritance tax; a system of tax equalization for state purposes; a scheme to bring taxables upon the assessment books and some device to collect at least part of the $6,000,000 delinquent taxes on real estate.

Governor Smith of New York advised a cut of twenty-five per cent in the state income tax for the year, and made an interesting suggestion that the improvements accomplished by the port authority, such as the vehicular tunnel under the Hudson River, be paid for not by taxation but by users of the new facilities, that is, that the agency engaged in the construction of these facilities should proceed to operate them as revenue-producing agencies in order to meet their cost.

Governor Silzer of New Jersey recommended a direct tax for the improvement and operation of state institutions, and that the state tax board have power to supervise assessments in the making and control over the budgets of taxing districts on appeal.

Several recommendations may be classed under the subject of appropriations and debts. Governor Fields of Kentucky noted that the floating debt of the state, $6,000,000 in outstanding warrants, was impairing the credit of the state, since the warrants were in many cases being sold at a discount. He proposed the retirement of these warrants and devoted almost his entire message to the suggestion of a bond issue of $75,000,000 for capital outlays, especially roads, charitable, educational, and penal institutions. Governor Cox of Massachusetts called attention to a reduction in the state debt of over $14,000,000 since 1921, accompanied by a reduction in the state tax of $2,000,000.

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Governor Ritchie of Maryland also claimed a reduction in the tax rate of nearly ten mills during the seven years of this and the coming administration. Governor Walker of Georgia advocated the enactment of a budget law without specifying details, but Governor Smith of New York urged the establishment of an executive budget by constitutional amendment as the only satisfactory solution of appropriation problems. Both Mississippi messages denounced the practice of the legislature of issuing bonds for current expenses and then issuing additional bonds to refund them.

The legislature and the governor in Texas played a sort of hide-and-seek game for three months after the close of the regular session of 1923. Before the adjournment of the regular session, Governor Neff called a special session for March 15, to provide funds within the revenue of the state for the maintenance of its government and institutions, to make effective the enforcement of the prohibition law, and to vest the courts with power to remove any officer who was proved to have wilfully failed to enforce the law. The legislature promptly adjourned the special session *sine die* at eleven o'clock, March 15. A second session was called to meet on April 16, and a third, May 16. Governor Neff told the members at the third session that they had appropriated at the second session $8,000,000 more than the estimated income of the state and called upon them to correct this discrepancy. Finally he vetoed bills aggregating in excess of $39,000,000. On June 14 he stated that although a cursory examination of the leading appropriation bills, which had just reached his desk, seemed to indicate that adequate revenue had not been made available, he felt that "we should not spend more of the people's money in marching up the legislative hill and down the legislative hill in a futile effort to do the thing that ought to be done, but which it seems impossible for you to do."

Schools and roads received considerable attention. Governors Cox of Massachusetts and Smith of New York made special pleas for the rural schools. The former showed that the per cent of untrained teachers in the schools of cities and towns of over 5,000 population is 4.8, while in smaller districts it is 20.3; the per cent of change in the larger places is 13, while in the smaller it is 48. In New York the rates of taxation in the 8,600 districts maintaining one-room schools vary from four-tenths of a mill to fifty mills. The enlargement of the unit of tax and administration and the distribution of more state money among the rural districts, in accordance with their educational needs and their financial resources was proposed. In New Jersey, Governor

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Silzer recommended the appointment of a committee to make a survey of the entire educational system.

Governor Trinkle of Virginia advised the consideration of the advantage of limiting the public educational system to meeting the real essentials of education rather than reaching into new activities which the state could not adequately finance. Governor Fields of Kentucky favored lending state money on easy terms to districts unable to provide suitable houses for primary and high schools. Governor Whitfield of Mississippi maintained that no obligation rests upon the state to provide higher education for all who desire it, and that it would be unjust to tax all the people to prepare a chosen few to earn larger emoluments than those who do not attend college. "The fundamental reason for higher institutions supported by the state is that they are indispensable in the preparation of leaders for all the activities of the state." "Methods of selecting students should be so changed as to provide only for the matriculation of students qualified in every way to become leaders in after-life. The law should fix the maximum number of students that each institution should annually accept; each county should have its definite quota." Governor Neff of Texas advised the creation of an illiteracy commission to reduce the number (300,000) of illiterates in the state. Governor Walker of Georgia recommended the furnishing of free textbooks for the elementary schools.

Practically all of Governor Trinkle's message to the special session in Virginia was devoted to a discussion of the relative merits of a bond issue for roads or a pay-as-you-go policy. He concluded in favor of the latter and desired the legislature to submit any borrowing program to the voters of the state for approval. The people later accepted the governor's judgment. Governor Hardee observed that the hope for a connected system of roads in Florida lies with the state road department to which he recommended the grant of power to adopt traffic regulations applicable to state highways. He asked legislation for the policing and protection of highways, and to authorize the railroad commission to regulate and secure proper compensations from truck companies using the highways. The first step, according to Governor Fields of Kentucky in redeeming certain counties of the state from the pauper class, is the construction of good roads within their borders. The increased revenues from their development would soon pay the cost of such improvements. Notes of caution regarding road expenditures, especially from bond issues, were sounded by Governors Whitfield of Mississippi and McLeod of South Carolina.

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Several pages of Governor Ritchie's second inaugural address (Maryland) criticized the system of federal grants-in-aid, insisting that a "great, fundamental, and enduring" principle is at stake, and demanding an end of centralization. Biennial sessions of the legislature were advised in Georgia, South Carolina, and Massachusetts. A peculiar situation exists in Florida. The constitution fixes the maximum membership of the house at sixty-eight, but it also requires one member from each county, and since the adoption of the constitution many new counties have been created. No reapportionment seems to have been made since 1887. A constitutional amendment providing a just apportionment was advocated. The Florida legislature has also been disregarding the constitutional limitation with reference to notice of the introduction of private bills to the counties affected. The courts allow the presumption that such notice was given although the journals of the legislature fail to show publication of such notice.

Governor Smith of New York again requested a four-year term for the state executive, and the amendment of the constitution by popular initiative. He would have the election of the governor fall in the odd year. This suggestion has aroused some Republican sarcasm. Governor Flynn of Rhode Island renewed his recommendations for changes in the constitution, to remove the property qualification for voting for city officers or upon city tax propositions, to establish a just system of senatorial representation, and to permit the calling of a constitutional convention. He asked for the granting of a real appointing power to the governor, which should include the sheriffs of the state, and the establishment of a force of special investigators subject to the selection and control of the attorney general.

Governor Cox of Massachusetts would require all cities and towns to adopt and use a budget system; he would raise the debt limit upon municipalities (twenty-six of the thirty-nine cities have been allowed through special concessions to exceed the limit fixed by the general law) and require that a portion of proposed improvements be financed directly from revenue. Governor Russell of Mississippi attacked the amount of fees paid to many local officers, since these fees total several times the salaries paid to state officers in many instances, and advised the passage of a law prohibiting the practice of nepotism by all state and district officers. Governor Whitfield of Mississippi recommended the limitation of local expenditures, the establishment of a general purchasing board for the state, and the election of levee commissioners by the people of the several counties of the various districts instead of

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their appointment by the governor as at present, since the huge amount of money handled by them and the patronage controlled by them make the present arrangement a constant opportunity for debauchery in state politics. Governor Fields of Kentucky admitted that the responsibility for the success of the highway commission rests upon the executive and at the same time asked to be made a member, *ex officio*, without power to vote, but privileged to sit in the meetings.

Various degrees of administrative reorganization and consolidation were urged by the governors of Florida, New York, Texas, and Rhode Island. Governor Smith of New York indulged in some gentle irony: "The present organization of the Council of Farms and Markets is so fundamentally wrong that a chief executive cannot deal with it. I have not the pleasure of the acquaintance of the Council, and I have met the Commissioner of Agriculture, who is their appointee, about twice. I feel no responsibility for the official acts of these men. . . . . I must presume that your honorable bodies, in fixing $2,200,000 as the amount to be spent in the fiscal year, did so after advice from the Council. If that be true, the Council has entirely disregarded any arrangements you may have made concerning the progress of this work by disposing of a twelve months' appropriation in approximately four months."

Governor Russell of Mississippi insisted that wholesale abuse has grown up from the absent voters' law and would repeal it, as being likely to cause more harm than good. The direct primary should be restored for state offices, according to Governor Smith of New York, bipartisan election boards restored in all counties where the constitutional intent has been disregarded, and the statement of expenditures made under the corrupt practices act should be required to be filed prior to the election. Governors Flynn of Rhode Island and Russell of Mississippi called for corrupt practices legislation. The latter asserted that one candidate for the office of state revenue agent spent for advertising tens of thousands of dollars. Governor Hardee of Florida believed that experience in five elections with the preferential primary law indicates that it should be repealed and a second primary provided for all candidates who do not obtain a majority vote at the first primary.

A state efficiency commission to have charge of all state institutions, except educational, was urged by Governor Russell of Mississippi, to consist of the governor, attorney general, and two senators and two representatives, selected by their respective houses. Governor McLeod of South Carolina called attention to the fact that the hundreds of

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petitions from convicted persons for executive clemency convince anyone of the lack of uniformity in sentences and the necessity for something like automatic clemency based upon conduct. He believed a system of indeterminate sentences would prove a remedy in part. Governor Hardee of Florida would abolish the private lease of county convicts. Governor Smith of New York has concluded that the key to the prison problem lies in the prison industries. In a special message he asked the legislature to create the office of superintendent of prison industries, the incumbent to be one of three members of a prison industries and parole board, the others being the superintendent of prisons and a deputy comptroller assigned by the comptroller. All functions related to prison conduct and management would be vested in this board. Three hundred from the penitentiary and 196 for county offenses is the pardon record of Governor Russell of Mississippi up to the date of his message.

Several governors touched on the field of social and economic legislation. Improvement of the divorce laws and a 48-hour law for women and children in industrial establishments were suggested by Governor Flynn of Rhode Island. An unpaid commission to study the question of fire losses would meet the approval of Governor Cox of Massachusetts and the inauguration of a ten-year program designed to reach all children in the lower school grades to determine those who need special hygienic supervision to prevent the development of tuberculosis. The extension of the rent laws was advised by Governor Smith of New York, as well as the strengthening of the laws designed to assure the capacity of medical practitioners, and provision for the earlier discovery and assistance of mental defectives in the schools and elsewhere. He also advocated the reduction of the noncompensated waiting period under the workmen's compensation law, because it denies cash compensation to over sixty per cent of all those injured in industrial accidents. He recommended the 48-hour week for women and minors in industry, the creation of an unpaid minimum wage board for women and minors, to operate as the similar Massachusetts authority does, and the abolition of the motion picture censorship. Gasoline, kerosene, oil, and boiler inspection will be provided in Mississippi if Governor Russell's wishes are carried out; as will gasoline inspection in Virginia, if the legislature heeds Governor Trinkle.

Measures looking toward the conservation of resources of various kinds were called for in several states, as, for instance, shell fisheries in Rhode Island, game in Mississippi, fish and game in Florida, inland

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waters and waterways in Virginia, natural beauty and recreation spots in Texas. Governor Smith presented a scheme for power development in the state by means of the creation of a New York state power authority, consisting of appointees of the governor, which should be authorized to issue bonds, exempt from state taxation, and secured entirely by the revenues to be derived from the improvements when made. In a special message he advised the creation of a state park council as the central and exclusive agency for the promotion and management of this field of state activity.

Governor Cox of Massachusetts asked authority to appoint a special commission to study the nature of the food supply of the state and its sources and means of distribution so as to lessen the food costs of the state and encourage the production of more of the supply within the state.

Governor Silzer of New Jersey advised legislation and other measures to prevent profiteering in coal.

A single public utilities commissioner instead of three is preferred by Governor Flynn of Rhode Island, and municipal regulation to state regulation by Governor Smith of New York with a provision for state regulation in case cities should not care to assume the responsibility. The latter governor also favored municipal ownership of public utilities, including bus lines, and the construction of rapid transit service by the city of New York without state interference. He proposed the loan of state money to municipalities and railroads for the purpose of eliminating the grade crossings of the state as rapidly as possible. The cost was estimated at approximately $400,000,000. Grade crossing elimination and a revision of the traffic laws were advocated by Governor McLeod, of South Carolina, and the study of the problem of placing landowners in possession of the thousands of acres of tenantless land in the state.

Governor Smith of New York asks the legislature to memoralize Congress for a modification of the Volstead Law. Governor Neff of Texas vigorously denounced the failure of local officers to enforce the prohibition law. "There is no such thing as local self-government in regard to violations of the law." He recommended that the attorney general be authorized to maintain ouster proceedings against officials for nonfeasance and, if necessary, to secure a fair trial, to conduct the proceedings in a county other than that of the residence of the officer to be tried. He would have no case, civil or criminal, reversed for technical reasons that do not touch the merits of the case. Prohibition

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enforcement was stressed in Mississippi, especially the problem of making a few of the fellows higher up feel the "cold steel of the law." Governor Trinkle announced that no one convicted for violation of the prohibition laws need make any application to him for clemency, nor those found guilty of driving automobiles when intoxicated. The abolition of unanimous verdicts was recommended in Florida and a new method of securing juries. Thousands of gallons of Jamaica ginger are being sold in South Carolina, and the governor proposed a limitation of the sale to the female heads of families or households, or some other drastic measure.

The reports of several important commissions were referred to in Massachusetts—one on higher education, one on jury service, and one on criminal law. Under the heading 'Inter-Racial Relations' Governor Whitfield of Mississippi said: "There is a definite relation between their (the negroes') happiness and prosperity and that of the state as a whole. . . . . With the political and social aspects of the race question we are fortunately not now concerned. . . . . If we would hold these laborers in the South, we must compete with the northern employer on his own terms. We must improve working and living conditions, look after the negro's health, foster manual training and modern agricultural methods, and see to it at all times that the less favored black man shall get a square deal in his business relations and in the courts."

RALPH S. BOOTS.

University of Nebraska.

State Legislation on Declaratory Judgments. Since the adoption in 1922 by the Commissioners on Uniform State Laws of the Uniform Declaratory Judgments Act, this particular reform in the administration of justice has made rapid progress. The declaratory judgment, it will be recalled, enables parties who are uncertain of their legal rights and are pecuniarily or otherwise prejudiced by actual or potential adverse claims by others, to invoke the aid of the courts for the determination of their rights before an injury has been done. The adverse claimant is cited and the issue is determined, if the court believes that such adjudication performs a useful, practical function in the settlement of an actual or potential controversy. As an instrument of preventive justice, the declaratory judgment thus differs in theory from the curative remedial judgment of the courts of common law, which were deemed

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incapable of acting until an injury had occurred; and while courts of equity have had power by injunction to prevent an immediately threatened injury and other measures of equitable relief in specific types of cases have been possible, there has been no method heretofore of having a contract or other instrument, for example, construed before breach and before damage has accrued by one party or the other acting on his own interpretation. The social advantage of deciding differences of legal opinion and removing uncertainty and insecurity from legal relations before they have ripened into a full-grown hostile litigation will be readily appreciated.[1] The important social service thus obtainable from the courts has recently induced the legislatures of several of the states to confer upon the courts power to render declaratory judgments.

Although the practice had been known in England since 1852, and on the European continent and in Scotland for hundreds of years prior thereto, it was not until 1915 that our states began to take any serious interest in this procedural reform.[2] In 1915, New Jersey in its Practice Act (ch. 116, sec. 7) adopted a provision enabling the courts, upon the request of an interested party, to construe "a deed, will or other written instrument" and declare the rights of the parties there-

[1] Sunderland, A modern evolution in remedial rights, 16 *Mich. L. Rev.* 69 (1917); Borchard, The declaratory judgment—a needed procedural reform, 28 *Yale L. Jour.* 1, 105 (1918); Kerr, Declaration of rights without consequential relief, 53 *Amer. L. Rev.* 161 (1919); Vinje, Declaratory relief, 4 Marquette L. Rev. 106 (1920); Schoonmaker, Declaratory judgments, 5 *Minn. L. Rev* 32 (1920); Dodd, Progress of preventive justice, 6 Amer. Bar Asso. Journ. 151 (1920); Gates, Declaratory relief, 1920 *Proceedings of Tennessee Bar Asso.*, 41; Cooper, Locking the stable door before the horse is stolen, 16 *Ill. L. Rev.* 436 (1922); Gordon, The law of declaratory judgments and its progress, 9 *Va. L. Rev.* 169 (1923); Torrey, The declaratory judgment, 8 *Iowa Law Bulletin*, 81 (1923).

[2] A few traces of conscious adoption of this form of relief may be found in the California Practice Act, §527, of 1850, enabling adverse claims to money or property to be determined. (See King v. Hall, 1855, 5 Cal. 83), and in Rhode Island, Acts of 1876, ch. 563, sec. 17, enabling declarations of right to be made by the courts. But when this was construed to require the existence of a possibility of obtaining coercive relief (Hanley v. Wetmore, 1886, 15 R. I. 386, 6 Atl. 777) it practically nullified the declaratory relief. Courts of equity in some states have also had statutory power to construe wills and in various cases, such as the removal of clouds from title, courts of equity had unwittingly, in a restricted class of cases, been rendering declaratory judgments. The class of cases under the new statutes is made practically unlimited.

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under.[3] This gave only a limited scope to the power to render declaratory judgments, in accordance with the English Rules of Court, Order LIV, a, of 1893. In this restricted form, the declaratory relief was adopted by Florida in 1919.[4]

In Connecticut, there had since 1915 been a statute enabling parties claiming adverse interests in real or personal property to have the title tried and settled.[5] There was therefore some justification for believing that a widening of the power to render declaratory judgments would be favorably entertained.

In 1919, after several writers in periodical articles and committees of state bar associations had advocated the reform, the movement acquired vigor and momentum. In that year, in addition to Florida, Michigan[6] and Wisconsin[7] empowered their courts to render declaratory judgments without limitation as to types of cases. But in Michigan and Wisconsin the statutes have met an unhappy and undeserved fate. The Michigan supreme court, in a decision which, it is believed, has been uniformly condemned by every reviewer of the case, held the Michigan Act unconstitutional on the alleged ground that it conferred on the courts nonjudicial power.[8] As so often happens, the facts of the first case are almost vital to the issue of constitutionality of a statute, and the facts in the Anway case were most unfortunate. A statute in Michigan provided that no public service company should require any employee to work for it more than six days a week. The plaintiff, an employee, brought an action for a declaration against the street railway company to the effect that under the statute he had the *privilege* to work more than six days a week, if he chose. Both parties had the same

[3] The principal cases that have arisen under this Act are In re Ungaro's Will (1917) 88 N. J. Eq. 25, 102 Atl. 244; Renwick v. Hay (1919) 90 N. J. Eq. 148, 106 Atl. 547; Town of Kearny v. Mayor of Bayonne (1919) 90 N. J. Eq. 499, 108 Atl. 121, 29 *Yale L. Jour.* 545.

[4] Florida, Laws 1919, ch. 7857 (No. 75). See 20 Columbia L. Rev. 106.

[5] Conn., Pub. Acts 1915, ch. 174, sec. 1, 2 Gen. Stat. 1918, sec. 5113. Ackerman v. Union & New Haven Trust Co. (1915) 90 Conn. 63, 96 Atl. 149 (1917), 91 Conn. 500, 506, 100 Atl. 22.

[6] Michigan, *Public Acts* 1919, No. 150, p. 278.

[7] Wisconsin, *Laws* 1919, ch. 242, sec. 2687 m. p. 253. See Mr. Justice Vinje in 4 *Marquette Law Rev.* 106.

[8] Anway v. Grand Rapids Ry. Co. (1920) 211 Mich. 592, 179 N. W. 350, 12 A. L. R. 25, 62. See comments in 19 *Mich. Law Rev.* 86, 30 *Yale Law Jour.* 161, 21 *Columbia Law Rev.* 168, 4 *Illinois Law Quar.* 126, 6 *Amer. Bar Asso. Journal* 145; 7 *ibid.*, 141, 7 *Cornell Law Quarterly* 255, and the following articles: Rice in 28 *West Va. Law Quar.* 1 and Schoonmaker in 5 *Minn. Law Rev.* 172.

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interest, and there was no controversy, a sufficient reason for declining, in the admitted discretion of the court, to render a declaratory judgment, but no reason for holding such power itself unconstitutional. A labor union intervened. The majority of the court, on its own initiative, confusing the declaratory judgment with an advisory opinion and a moot case, from which it differs fundamentally, and invoking other irrelevant prejudices, held the act unconstitutional, against a dissenting opinion which clearly pointed out the majority's error. The decision, however erroneous, seems for the present to have effectually blocked the movement in Michigan.

But perhaps equally surprising is the recent action of Wisconsin[9] in repealing its statute of 1919, on the asserted initiative of the attorney general, on the alleged ground that he feared the Act, in view of the Michigan decision of 1920, to be unconstitutional, and on the further supposed ground that the Act gave too much power to the courts. It is hard to give serious consideration to such a misconceived objection.

In 1920, New York adopted the provision for declaratory judgments as section 473 of its new Civil Practice Act. It is a short form, giving the highest court of original jurisdiction the broadest power, without limitation as to subject-matter. It was felt that experience, as in England, would work out such limitations as might be necessary. The section, which is an adaptation of the broad English Order XXV of 1883, reads:

"The Supreme Court shall have power in any action or proceeding to declare rights and other legal relations on request for such declaration, whether or not further relief is or could be claimed, and such declaration shall have the force of a final judgment. Such provisions shall be made

[9] Wisconsin, *Laws* 1923, ch. 440. (1924) 2 *Wisconsin Law Rev.* 376. In one interesting case in Wisconsin, the constitutionality of the Act seems to have been assumed, the court holding that members of a fraternal society who under an existing policy would obtain a certain pension at the age of 70 had no such vested interest as could not be modified by a change in the by-laws. United Order of Foresters v. Miller (1922) 178 Wis. 299, 190 N. W. 198. The Wisconsin Supreme Court expressed no doubt on question of constitutionality. Judge Rodenbeck in New York, Board of Education v. Van Zandt (1921) 119 Misc. 124, said that the constitutionality of "such a procedure is not open to question." The same conclusion has been reached by the Connecticut Supreme Court, Braman v. Babcock (1923) 98 Conn. 549, 120 Atl. 150, and by the California Supreme Court, Blakeslee v. Wilson (1923) 213 Pac. 495.

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by rules as may be necessary and proper to carry into effect the provisions of this action."

Rules 210 to 214 were then drafted, by virtue of which the practice is assimilated to that prevailing in other actions, the form of prayer for relief is indicated, the court's duty to issue the declaration as well as the assessment of costs, is made discretionary and submission of disputed facts to a jury is provided for. Under the New York Act several important cases have been brought.[10]

In the sessions of the 1921 legislatures, three states and Hawaii adopted the wide form of declaratory judgment procedure, namely, Connecticut, Kansas and California.[11] In the meantime, the Commissioners on Uniform State Laws had begun to study a draft of a Uniform Act, which they finally approved in 1922.

The Connecticut Act closely follows the New York short form, and gives to the courts supplementary rule-making power. The Connecticut supreme court, already accustomed to a limited type of declaratory action, has enthusiastically sustained the more extensive power con-

[10] Declaration sought that a "news reel" was not subject to the censorship of the ordinary exhibition; held, that it was. Pathé Exchange v. Cobb (1922) 202 App. Div. 450, 236 N. Y. 37. Action for a declaration by the Board of Education against the Board of Estimate of Rochester that the tax limit of 2 per cent on assessed valuation for "city purposes" was exclusive and not inclusive of school funds; held, for defendant. Board of Education v. Van Zandt (1922) 119 Misc. 124, 204 App. Div. 856, aff. 234 N. Y. 644, 23 Columbia L. Rev. 69. Action for a declaration by a street railway company against the City of New York that the plaintiff's construction of a franchise contract was correct; so held. The action was brought just before expiration of the renewal period, whereby breach and irreparable damage were avoided. Manhattan Bridge Three Cent Line v. City of New York (1922) 204 App. Div. 89, 236 N. Y. 57. Action for a declaration that under a contract of sale of a newspaper having political advertising patronage, reserving bills payable to the plaintiff seller and assigning political patronage to the buyer, an accrued bill for past advertising in hands of State Comptroller was "bills payable" and not "political patronage"; so held. Durant v. Whedon (1922) 201 App. Div. 196. Action by Comptroller Craig against Sinking Fund Commissioners of New York City asking for a declaration that a city ordinance and the city charter disabled the commissioners from passing any binding resolution (in this case for the sale of city buildings to provide land for schools) without the Comptroller's presence; so held. (Appellate Division, 1st Dept., Jan. 1924, *New York Law Journal*, Feb. 23, 1924.) The Court in this case said: "It would be difficult to find a more appropriate case for the application of the law permitting declaratory judgments."

[11] Connecticut, *Acts*, 1921, ch. 258, Rules of Practice, 62–66; Kansas, *Acts*, 1921, ch. 168; California, *Statutes* 1921, ch. 463, Code of Civil Procedure, sections 1060–1062; Hawaii, *Laws* 1921, ch. 162.

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ferred by the 1921 Act in several interesting actions for declarations.[12]

The Kansas Act of 1921 closely follows the Michigan Act of 1919, as does the Act of Hawaii. Its major difference lies in the introduction of the words "in cases of actual controversy," the absence of which seemed to be relied upon by the Michigan court in the Anway case to justify their holding the Michigan Act unconstitutional. As already observed, such a conclusion was entirely unnecessary, for nobody thought of conferring upon the courts power to decide imaginary, academic or moot cases and it was gratuitous to assume that the Michigan Act required the court to decide such cases. Under their discretion, as have courts of equity from time immemorial, they would and should have refused to decide such cases, without drawing the altogether unfounded inference that the Michigan Act imposed any such alleged duty upon them. Nevertheless, to make assurance doubly sure, the Kansas Act sought to avoid any such pitfall, though invented for the occasion and fathered by the prejudice of the Michigan court, and inserted the words "in cases of actual controversy." Relying in part upon these words, though actually discrediting the Michigan decision, the Kansas Supreme Court has held the Kansas Act constitutional.[13] It is believed that the words "in cases of actual controversy" are surplusage and unnecessary, yet by the fact that an issue has been raised upon them, it may induce certain courts possibly

[12] Braman v. Babcock (1923) 98 Conn. 549,120 Atl. 150, in which plaintiff asked for a declaration that he was the person mentioned as legatee in a certain will; while sustaining their general power to issue declarations, the court declined in this case because the land affected was located in Rhode Island. Joy Co. v. New Amsterdam Casualty Co. (1923) 98 Conn. 794, 120 Atl. 684, in which plaintiff, a contractor, whose rights against a surety company had to be invoked within a limited time and depended upon the liability of his subcontractor to certain lienors, sought a declaration as to the amount due to the lienors; the declaration was issued. Lehmaier v. Bedford (1923) 99 Conn. 468, 121 Atl. 810, in which a certain life director of a hospital association brought an action against the elected directors for a construction of the articles of association and a declaration that the life directors were privileged to vote in all matters; so held.

[13] State ex rel Hopkins v. Grove (1921) 109 Kan. 619, 201 Pac. 83, 19 A. L. R. 1124, in which the plaintiff, the State, sought a declaration that the defendant, employed by the Missouri Pacific Railroad, was not eligible to the office of city commissioner, under a state statute, because his employer held a franchise from the city; so held. State v. Wooster (1922) 111 Kan. 830, 208 Pac. 656 (declaring the powers of a state board of education); State v. Kansas City (1922) 110 Kan. 603, 204 Pac. 690, 20 *Michigan Law Rev.* 775, declaring the power of a city to issue bonds of a certain type. See the tribute to the declaratory judgment rendered in this case by Burch, J.

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hostile to the new procedure to give too narrow an interpretation to the word "actual," and thereby deny relief in many cases of removal of clouds from rights and other legal relations, where it should be granted. The issue thus raised persuaded the American Bar Association committee on jurisprudence to insert the words in question in the proposed federal Act, now pending before the House and Senate committees on the judiciary, for which action they claim to derive additional support from the case of Muskrat v. United States (1911) 219 U. S. 346. The precaution is not believed to be necessary.

The California Act does not follow closely either the short Act of New York or the Kansas Act, but constitutes an intermediate form, not essentially different in substance from the Kansas Act.[14] Though first held unconstitutional in an inferior court in Los Angeles, which relied upon the Michigan decision and seemed unaware of the then decided Grove case in Kansas,[15] the Supreme Court of California in a convincing decision has recently held the Act constitutional.[16]

In 1922, the Uniform Declaratory Judgments Act was finally approved by the Commissioners on Uniform State Laws. That action gave considerable impetus to the new movement. The Act contains 16 sections, of which six are strictly procedural in character. This is due to the fact that many of our states do not yet confer upon their courts any rule-making authority; hence the necessity of incorporating procedural rules in the body of the legislation. The first section confers on the courts the broad powers of the English Order XXV, 1883, and the New York Act, and the second section the power to construe written instruments, including statutes, etc., following the English Order LIV a, 1893 and the New Jersey and Florida restricted statutes. Sections 3 and 4 prescribe further details of types of cases in which declarations may issue, but section 5 points out that the enumeration is not exclusive. By sections 6 and following the court's power is expressly made discretionary, the power of review is preserved, supplemental relief is provided for, a jury trial of issues of fact is reserved, and costs and parties to the action and certain questions of statutory construction are dealt with. The Uniform Act omits the phrase "in

[14] California legislation of 1921 providing for declaratory relief, by Maurice E. Harrison (1921) 9 *California Law Rev.* 359.

[15] Newberry v. Newberry, Los Angeles Superior Court, commented upon adversely in 10 *California Law Rev.* 158.

[16] Blakeslee v. Wilson (1923, Cal.) 213 Pac. 495, 4 Iowa Law Bull. 272, declaring the plaintiff's rights under a contract of employment as attorney of defendant.

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cases of actual controversy." Where procedure differs so greatly from state to state, it was not easy to draft a procedural statute which could accommodate itself to the divergent practice of the different states.

In 1922, Kentucky, Virginia and South Carolina were added to the states which have made provision for declaratory judgments.[17] Kentucky, using the Uniform Act and the Kansas Act as models, redrafted a statute of its own, and Virginia, with the addition of two sections relating to local venue, adopted practically the Kansas Act. South Carolina followed the New Jersey and Florida form.

In 1923, the effect of the proposal of a uniform act became apparent. Five states in their 1923 sessions adopted the uniform act—Pennsylvania, Tennessee, Colorado, Wyoming and North Dakota.[18] Actions under them do not yet appear to have reached the courts of last resort. Bills providing for declaratory judgments have passed one house of the legislature in several states and have been introduced in many more. It is hoped that the bill which was first introduced in Congress in 1919, and which, with minor changes, has since received the active support of the American Bar Association, will soon be enacted by Congress. It is believed that with the issue of constitutionality probably finally removed from doubt and with the continued use of this relief in the states which have already made provision therefor, that statutes will soon be enacted in most of the other jurisdictions of the country and that the public may look forward hopefully to a more simple and efficient method of adjusting many conflicting interests and to an enlarged social service from its courts.

EDWIN M. BORCHARD.

Yale University.

Changes in Election Laws, 1922--23. As usual the election legislation of the past biennium (1922 and 1923) is voluminous, nearly every state having passed some statutes and several having completely revised their laws on this subject. New Jersey, for example, which enacted a revised election law in 1920, found it necessary even after

[17] Kentucky, *Acts* 1922, ch. 83; Virginia, *Acts* 1922, ch. 517; South Carolina, *Statutes at Large*, 1922, Ch. 542. In Proctor v. Avondale Heights Co. (1923, Ky.) 255 S. W. 81, the Kentucky court construed the act in an action by a land company asserting their power and privilege to convey to a water company certain lots reserved, among others, for parks.

[18] Pennsylvania, *Laws* 1923, ch. 321; Tennessee, *Acts* 1923, ch. 29; Colorado, *Acts* 1923, ch. 98; Wyoming, *Acts* 1923, ch. 50; North Dakota, *Acts* 1923, ch. 237.

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the numerous changes in 1921 to devote over seventy pages of its session laws of 1922 to making further corrections and additions, scarcely any article of the original act escaping amendment.[1] Likewise Missouri, whose election laws were overhauled in 1921, thoroughly revised and reënacted the laws relating to registration and the holding of primary and general elections in counties of over 100,000 population.[2] The more significant movements relate to voting qualifications, ballot changes, voting machines, corrupt practices, and the "short ballot."

Voting Qualifications: New York, having experienced some difficulty in the application of the literacy qualifications for voters enacted in 1921, has abolished the test for determining literacy at the time of application for registration. Now proof of literacy is presented either in the form of a certificate issued to voters under rules of the board of regents of New York, or in the form of a certificate from a grammar or high school in which the English language is used. Nevertheless, inability to write one's name, except in case of physical disability, is conclusive proof of illiteracy notwithstanding the presentation of such certificates.[3] The Oregon legislature enacted a literacy test for voting, to become effective in case the voters adopt an amendment to the state constitution authorizing such tests.[4]

Indiana had withdrawn the privilege of registration from foreign-born persons who have only declared their intention of becoming naturalized. Complete naturalization is now required.[5]

Special qualifications for voting in bond elections are provided in three states. Florida prescribes that in addition to having other legal qualifications an elector in bond elections must be a freeholder.[6] Montana provides that only registered voters whose names appear on the latest assessment roll shall be qualified to vote in such elections.[7] A new statute in Wyoming prohibits an elector from participating in a bond election unless he is an owner of real property in the jurisdiction concerned.[8]

[1] *Laws*, 1922, ch. 242, p. 425 ff.
[2] *Laws*, 1923, p. 179.
[3] *Laws*, 1923, ch. 809, p. 1449.
[4] *Laws*, 1923, ch. 126, p. 183.
[5] *Laws*, 1923, ch. 119, p. 319.
[6] *Laws*, 1923, ch. 9294, p. 326.
[7] *Laws*, 1923, ch. 98, p. 263; see also ch. 31, p. 481.
[8] *Laws*, 1923, ch. 102, p. 195.

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The most startling development in the field of voting qualifications is a Texas statute which reads as follows: "All qualified voters under the laws and constitution of the State of Texas who are bona fide members of the Democratic party, shall be eligible, to participate in any Democratic party primary election, provided such voter complies with all laws and rules governing party primary elections; however, in no event shall a negro be eligible to participate in a Democratic party primary election held in the State of Texas, and should a negro vote in a Democratic primary election, such ballot shall be void and election officials are herein directed to throw out such ballot and not count the same."[9] It would be interesting to see how the United States Supreme Court would deal with this defiance of the fifteenth amendment in view of its decision in the Newberry case that a "primary" does not constitute a part of an "election" within the meaning of Article I, section 4 of the constitution. However, this issue will probably never be raised as the statute is doubtless unconstitutional as a denial of "equal protection of the laws." It may be of significance that while Governor Neff did not veto this law it went into effect without his formal approval.

Short Ballot: The short ballot movement makes headway, but chiefly by means of lengthening terms of office. The most important development was the adoption by Maryland, by referendum in the general election of 1922, of an amendment to the state constitution increasing from two to four years the terms of state and county officers, except judges of the circuit courts and some judges in Baltimore.[10] The New Mexico legislature has proposed two amendments to the constitution of the state which will increase the term of office of all state and county officers from two years to four.[11] In Kansas, city commissioners in city manager cities of over 100,000 population are to be elected for four years instead of two.[12] In all other city manager cities in that state the ballot is shortened by a dovetailing of terms of office so that two instead of three commissioners are chosen every two years.[13] A new law in Wisconsin applying to cities of the first class increases the term of aldermen from two to four years.[14]

[9] *Laws*, 1923, 2d called session, ch. 32, p. 74.
[10] *Laws*, 1922, ch. 227, p. 524.
[11] *Laws*, 1923, p. 350.
[12] *Laws*, 1923, ch. 84, p. 123.
[13] *Laws*, 1923, ch. 91, p. 129.
[14] *Laws*, 1923, ch. 122, p. 227.

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Nonpartisan Elections: North Dakota, which in 1919 made all elections for county, judicial, and school officers nonpartisan, has now added to the nonpartisan list all state officers and members of the legislature.[15] The only offices which remain partisan are presidential electors, United States senators and members of the House of Representatives. A separate ballot is now provided for the election of these officers.[16] An attempt was made in Kentucky to provide nonpartisan elections for officers in cities of the first class.[17] But the provisions of the statute appear so contradictory that it is difficult to see how it can be made effective at all.

Registration: A very considerable portion of the new legislation relates to the matter of registration. Most of this is of minor significance, dealing with the time and place of registration or with technicalities in making up of the registration lists. Kentucky, which has hitherto required registration only in cities of certain classes, now requires registration as a prerequisite to voting of all qualified electors.[18] The register is apparently to be a permanent one, as it is to be made by precincts in 1922, additions are to be made annually in July, and special procedure is required for correcting it and for transferring names from one precinct in a county registration book to another. Delaware proposes a constitutional amendment making registration a qualification for voting and giving the legislature more freedom in the matter of enacting uniform registration laws.[19]

Apparently in dealing with subject of registration the legislator is perplexed to know how the requirement should vary with differences in population. Colorado,[20] Florida,[21] Maine[22] Missouri,[23] New Jersey,[24] Pennsylvania[25] and Wisconsin,[26] make special provisions for cities or counties of certain sizes, and Indiana proposes a constitutional amendment to empower the legislature to classify the various counties, cities

[15] *Laws*, 1923, pop. ed. p. 45, S. B. No. 233.
[16] *Ibid.*, p. 212, H. B. No. 285.
[17] *Laws*, 1922, ch. 137, p. 406.
[18] *Laws*, 1922, ch. 138, p. 412.
[19] *Laws*, 1923, ch. 1, p. 3.
[20] *Laws*, 1923, ch. 109, p. 312.
[21] *Laws*, 1923, ch. 9295, p. 327.
[22] *Laws*, 1923, ch. 129, p. 144.
[23] *Laws*, 1923, No. 112, p. 148; No. 278, p. 680.
[24] *Laws*, 1922, ch. 242, p. 434 ff.
[25] *Laws*, 1923, p. 179.
[26] *Laws*, 1923, ch. 290, p. 670.

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and towns and to enact a uniform registration law for each class.[27] Maryland has changed the provisions regarding registration in Baltimore. The register is now made up quadrennially in even numbered years instead of biennially, with revision annually in the remaining years.[28] Minnesota creates the office of commissioner of registration for all cities of 50,000 or over, governed under "home rule" charters, whose duties are to register voters, correct the registers, etc.[29] The cities affected by this law are St. Paul and Duluth. Georgia authorizes city officials in three cities, none of which has a population of 3000, to require registration for city elections.[30] On the other hand Wisconsin provides that in towns of less than 5000 there shall be no registration unless requested on petition of twenty per cent of the voters.[31]

Formerly in New Jersey an elector who failed to register might have his name placed on the register on election day by order of a court on proof of his qualification. Now he must prove in addition that he failed of registration "for some reason other than his own neglect or forgetfulness."[32] In Indiana each person desiring to be registered must make application in person.[33] Formerly this might have been done by mail or by another person. In contrast with this change Colorado permits any registered elector to register either "three other persons" or the members of his family, "including servants" up to any number.[34]

The use of registration to induce citizens to perform their public duties still has some vogue. Georgia in a statute operative only in the city of Vienna, makes the registration of electors permanent as long as his taxes are paid.[35] A new law in Nevada directs the county clerks to cancel the registration not only of those who fail to vote in the general elections (as provided in the Registration Act of 1917) but also of those who vote by "absent ballot."[36] If penalizing a voter for failing to exercise a right is of doubtful propriety, as many contend, this measure is utterly indefensible, as it seems to penalize the voter who takes the trouble to avail himself of a privilege which the law expressly confers upon him.

[27] *Laws*, 1923, ch. 198, p. 577.
[28] *Laws*, 1922, ch. 157, p. 368.
[29] *Laws*, 1923, ch. 305, p. 416.
[30] *Laws*, 1923, Pt. III, title 1, pp. 499, 646, 756.
[31] *Laws*, 1923, ch. 17, p. 24.
[32] *Laws*, 1922, ch. 242, p. 441.
[33] *Laws*, 1923, ch. 119, p. 319.
[34] *Laws*, 1923, ch. 109, p. 312.
[35] *Laws*, 1923, Pt. III, title 1, p. 833.
[36] *Laws*, 1923, ch. 90, p. 152.

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Many minor changes in registration laws were apparently necessary to provide for the registration of women, as for example in Ohio[37] and Texas.[38] Of similar incentive, doubtless, is the New York statute which requires the voter merely to state that he is over twenty-one years of age instead of declaring his age as heretofore.[39] In some states women formerly could vote for only certain offices or upon certain questions. For this reason separate ballot boxes for women's votes were necessary. Since the adoption of the nineteenth amendment such provisions are no longer necessary. Therefore, Iowa[40] and North Dakota[41] have repealed their laws relating to this matter. Massachusetts[42] and New York[43] have proposed amendments to their constitutions in order to make the qualifications for voting conform to the woman suffrage amendment.

Other measures which follow in the wake of women suffrage are the new Massachusetts law[44] making women eligible to election or appointment to all state and county offices, and the constitutional amendments submitted in Delaware[45] providing that sex shall be no bar to the holding of public office, and in Iowa[46] making women eligible to serve in the senate and the house of representatives, these being the only offices in Iowa for which women are now ineligible. Of interest are the new statutes in Iowa[47] and Missouri[48] which double the size of party committees and provide for equal representation of men and women on each committee. In Missouri all party committees are affected, in Iowa only county central committees.

Ballots and Voting Machines: Georgia has finally enacted an Australian ballot law.[49] However, it is not to be effective in any county until two successive grand juries of the county have recommended that it be put in force. The ballot to be used is the party column type, but is

[37] *Laws*, 1923, p. 118.
[38] *Laws*, 1923, 2d called session, ch. 17, p. 45.
[39] *Laws*, 1923, ch. 715, p. 1279.
[40] Briggs, J. E. and Van Ek, J.: *The Legislation of the Fortieth General Assembly of Iowa*, 1923, p. 24.
[41] *Laws*, 1923, pop. ed. p. 18, S. B. No. 6.
[42] *Laws*, 1923, p. 594.
[43] *Laws*, 1923, p. 1757.
[44] *Laws*, 1922, ch. 371.
[45] *Laws*, 1923, ch. 3, p. 7.
[46] Briggs and Van Ek, *op. cit.*, p. 35.
[47] *Ibid.*, p. 25.
[48] *Laws*, 1923, p. 197.
[49] *Laws*, 1922, No. 530, p. 97.

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without the party emblem or the party circle. The law makes the usual provisions for secrecy and for insuring honest count and return. The passage of this statute leaves South Carolina as the only state without some provision for the use of the Australian ballot.

California, which repealed its voting machine law in 1921, has passed a new statute creating a state commission on voting machines and permitting the use of machines generally. The law provides for the examination and approval of machines by the commission, for the adoption of approved machines by local boards, and in detail for instructing voters and protecting them in the use of voting machines.[50] Virginia also authorized the use of voting machines, but only for cities of 50,000 or over.[51] Machines must first be approved by the state board of canvassers, which acts as a voting machine commission, and the law makes suitable provisions for protecting the machines and the voters in using them. An interesting requirement is that only one minute is allowed the elector to vote on the machines.

Conduct of Elections: Of a multitude of statutes dealing with the details of election procedure a few deserve notice. In Minnesota employees of the state, counties, and larger cities are ineligible to serve as election officers, and, in cities of the first, second and third classes, a husband, wife, parent or child of a candidate is ineligible for such service.[52] Another Minnesota law authorizes cities of the first class to adopt the use of a ballot-assembling device to save time in counting the votes and to increase the accuracy of the count.[53] The apparatus seems to be similar to the "counting frames" used in some towns in Massachusetts. The sections of the New Jersey laws which authorized the payment out of county funds of the expenses of transporting aged and infirm voters to and from the polls on election day were repealed.[54] A change in the New York law requires a statement of the results of the canvass in New York City to be made not only to the local police headquarters, as heretofore, but also the board of elections. The law provides for the participation of the chairman of the board of elections in the canvass instead of leaving it to the police department alone.[55] The significance of this change apparently is that it provides a check on the "police returns."

[50] *Laws*, 1923, ch. 96, p. 182.
[51] *Laws*, 1922, ch. 51, p. 62.
[52] *Laws*, 1923, ch. 139, p. 148.
[53] *Laws*, 1923, ch. 404, p. 556.
[54] *Laws*, 1923, ch. 243, p. 458.
[55] *Laws*, 1923, ch. 805, p. 1446.

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A miscellany of statutes of minor importance deal with such things as the number of ballots to be delivered to each precinct (Missouri); the definition and establishment of election districts or precincts (Maryland, Michigan, Oregon, Wisconsin); recount and contest proceedings (Oregon, Wisconsin); time of opening and closing polls (Connecticut, Maryland, North Dakota); the appointment, qualifications, duties and payment of election officers (Maryland, Montana, New Jersey, New York, Pennsylvania); certificates of nomination (North Dakota, Pennsylvania, Wisconsin); filling of vacancies in office of United States senator (Vermont); displaying United States flag at polling places (Michigan).

Corrupt Practices: In California the law passed in 1921 making referendum elections subject to the provisions of the corrupt practice laws was strengthened in 1923 by broadening the meaning of terms, by changing times for filing statements of receipts and expenditures and requiring additional statements, and by increasing the penalties for violation.[56] Publication of statements of campaign expenditures in newspapers is no longer required in Montana.[57] The amount that may be spent by candidates for public office in Massachusetts has been increased by doubling the amounts formerly allowed.[58]

New Jersey passed a law in 1921 requiring all candidates for office who are permitted to spend more than two hundred dollars in a campaign to appoint a campaign manager. By a new act[59] this requirement is made to apply to all candidates who are permitted to spend more than five hundred dollars. Furthermore, no candidate, who is prohibited from spending more than five hundred dollars (formerly one hundred dollars) in his campaign is required to make a statement prior to the election. In the same state the allowable expenditures for advertising now include, in addition to that in newspapers and other periodicals, advertising in railroad and trolley cars and other vehicles (including airplanes), and advertising "by means of banners, electric signs, moving pictures, or wireless telephone or telegraph." The New Jersey statute also contains a number of minor changes intended to increase the freedom of candidates and campaign managers in the matter of advertising and, at the same time, to protect candidates from malicious attacks.

[56] *Laws*, 1923, ch. 391, p. 847.
[57] *Laws*, 1923, ch. 31, p. 48.
[58] *Laws*, 1923, ch. 110.
[59] *Laws*, 1922, ch. 242, p. 485 ff.

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The North Dakota law providing for publicity pamphlets has been changed so that the pamphlets are "to be printed and distributed only in the event that at the election to be held, there shall be submitted to the electors of the state an initiated or referended law, or proposed amendment" to the state constitution.[60] This change appears to take the emphasis from the use of the pamphlet by candidates, and probably is only giving legal effect to an actual diminution in the use of the pamphlet. In Rhode Island a new law provides that publications intended to defeat candidates for nomination or election to public office, or to defeat any proposal submitted to the voters, shall carry the name of the person (or officers of a committee or organization) responsible for the publication; and where such statements are published for pay in newspapers they must be designated as "advertising."[61] Of similar trend is the provision in Massachusetts prohibiting the use of the names of political parties in advertising, etc., by organizations other than duly elected political committees, or without the consent of the committees.[62] In addition to its laws prohibiting the interference with a voter in casting his ballot Arizona has passed a statute making it unlawful for any corporation or its officers or agents to prevent an employee by any means from engaging in other political activities.[63]

Of special interest is a resolution passed by the New Jersey legislature in 1922. It authorizes the appointment of an unpaid commission of ten members whose function is to make recommendations to the legislature for the revision of election laws "for the purpose of standardizing and rendering more efficient the character of, and representation in, party organization, and providing uniform rules, regulations, constitution, and other matters relative to the conduct and working efficiency of the same."[64] The state chairmen of the Democratic and Republican parties are each to appoint five members (two women) of the commission, or if they fail the governor makes the appointments.[65]

VICTOR J. WEST.

Stanford University.

[60] *Laws*, 1923, pop. ed. p. 83, H. B. No. 90.
[61] *Laws*, 1923, ch. 2342, p. 95.
[62] *Laws*, 1923, ch. 98, p. 50.
[63] *Laws*, 1923, ch. 9, p. 52.
[64] *Laws*, 1922, p. 703.
[65] The legislatures of Kentucky, Louisiana, Maryland, Mississippi and Virginia were in session in 1922, only; those of Georgia, Massachesetts, New Jersey, New York, Rhode Island, and South Carolina were in session in both 1922 and 1923. In the remaining states the legislatures met only in 1923. Session laws of

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Absent-voting Laws.[1] It would be hard to find another reform connected with our election system that has spread so rapidly and attracted so little public attention as the movement which has practically put an end to the virtual disfranchisement of large numbers of intelligent citizens in civil life merely because, for one good reason or another, they could not appear in person at their precinct polling places on the day of a primary or an election.

Since the enactment of the Vermont law of 1896 and the Kansas and Missouri acts of 1911, one state after another has enacted legislation for the benefit of absentee voters until at the present time not more than four states[2] appear to be without any such laws. A few states extend the privilege of voting *in absentia* only to persons in the military or naval service; others restrict the privilege to civilians; while still other laws, expressly or impliedly, cover both classes.

Since 1918, two states, have adopted constitutional amendments empowering their legislatures to enact absent-voting laws, New York (1919)[3] and California (1922); and the legislatures of seven states have enacted such laws for the first time. No state, so far as the writer can discover, has repealed its absent-voting statutes, although one or two military absent-voting laws, enacted during the period of the World War, have expired by self-limitation. The states in which absent-voting legislation has recently made its initial appearance are Alabama,[4]

the states of Alabama, South Carolina, Tennessee and West Virginia were not available at the time this report went to the printer. In the preparation of these notes the author has had the assistance of Professor Wm. Anderson of the University of Minnesota, Professor P. O. Ray, of Northwestern University, and Miss Amelia L. Hedges, Miss Gertrude E. Knox and Mr. Gilford G. Rowland, research assistants in Stanford University.

[1] For previous summaries of absent-voting legislation, see *American Political Science Review*, VIII, 442–445 (Aug., 1914); X, 114–115 (Feb., 1916); XI, 116–117 (Feb., 1917); "320–332 (May, 1917); XII, 251–261 (May, 1918); 461–469, (Aug., 1918); XIII, 269–270 (May, 1919); and XVI, 463 (Aug., 1922).

[2] Connecticut, Georgia, South Carolina, and Kentucky. An absent-voting law was passed in Kentucky in 1918, but was declared unconstitutional by a court of that state.

[3] A further amendment was submitted in New York in 1923, extending the absent-voting privilege to inmates of soldiers' and sailors' homes.

[4] *General Acts of Alabama, 1919*, No. 75, 620.

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and Utah[5] (1919); Mississippi[6] and New York[7] (1920); Louisiana[8] and Arizona[9] (1921); and California[10] (1923).

California's law expressly extends the privilege of voting *in absentia* to both civilians and to persons in military or naval service; but the other new laws are apparently intended solely for civilians. Arkansas supplemented her absent-voting law of 1917[11] with a new statute in 1923 for the benefit of soldiers, sailors, and marines.[12] On the other hand, Pennsylvania, Nevada, Delaware, Massachusetts, and West Virginia have recently added to their military absent-voting laws new acts applicable to civilians.[13]

The new laws of Arizona, Delaware, Louisiana, Mississippi, New York, Utah, Wyoming and West Virginia all conform closely to the North Dakota (1913) type of absent-voting legislation, under which a ballot marked *in absentia*, or in anticipation of absence, is counted by the election officials in the voter's home precinct. The new Wyoming Act, repealing the Kansas (1911) type of law passed in 1915, and the Vermont law of 1919,[14] which superseded the earliest of all our civilian absent-voting laws (1896), also conforms to the North Dakota model; and the same is true of most features of the new California and Pennsylvania laws, except that the counting of absent-voters' ballots in these two states is deferred until the official canvass takes place after a primary or an election. In this respect the California and Pennsylvania laws more closely conform to the Kansas (1911) statute, but both make more adequate provision for safeguarding the secrecy of the ballot.

The Nevada and Delaware laws, and also an amendment to an earlier (1917) Idaho law[15] extend the privilege of absent-voting to persons kept away from the polls by reason of illness or physical dis-

[5] *Laws of Utah, 1923*, Ch. 99.
[6] *Laws of Mississippi, 1920*, Ch. 155; *Ibid., 1922*, Ch. 256.
[7] *Laws of New York, 1920*, Ch. 875.
[8] *Acts of Louisiana, 1921*, No. 61.
[9] *Laws of Arizona, 1921*, Ch. 117.
[10] *Statutes of California, 1923*, Ch. 283.
[11] *Public and Private Acts of Arkansas, 1917*, I, pp. 951 ff.
[12] *Ibid., 1923*, Act 619.
[13] *Laws of Pennsylvania, 1923*, No. 201; *Laws of Nevada, 1921*, Ch. 90; *Ibid., 1923*, Ch. 117; *Laws of Delaware, 1923*, Ch. 103; *General Acts of Massachusetts, 1919*, Ch. 289; *Acts. of West Virginia, 1921*, Ch. 55.
[14] *Laws of Vermont, 1919*, No. 7; *Ibid.*, 1921, No. 4; *Session Laws of Wyoming, 1923*, Ch. 101.
[15] *Idaho Session Laws, 1923*, Ch. 57.

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ability. This brings the number of states making express provision for sick and disabled voters up to at least six, Wisconsin, Indiana, and Iowa being the other three. It is in this direction, doing tardy justice to sick or disabled voters, that most remains to be done in the great majority of the states in perfecting absent-voting legislation.

The laws of New York, Pennsylvania, and Wyoming are the only recent measures which, like earlier legislation in Virginia (1916) and Tennessee (1918), expressly permit absent-voting in any part of the United States. By a recent amendment to her statute of 1917, Montana also comes within this class;[16] and perhaps West Virginia also, where absentees are required to be outside the state in order to take advantage of this form of voting. Louisiana, at the other extreme, requires the prospective absentee to mark his ballot in the presence of the county official who issues it. In other states voting outside the voter's home state may be authorized by implication, for most states merely specify that the voter must be beyond his own county or precinct. Utah has amended the act of 1919 so as to confine absent-voting to persons who are outside their own counties and "not within twenty miles of their voting precinct."[17] A similar amendment, with twenty-five miles as the limit, was adopted in Washington (1923).[18]

Absent-voting under the New York and Arizona statutes is restricted to general elections, and the same is true of the recent Massachusetts and Delaware laws. The other new laws cover both primaries and elections; and an amendment to the Minnesota law of 1913 (which applied only to general elections) and the new Wyoming law now permit absent-voting in primaries[19] in those states. An Oregon amending act enlarges the list of eligible absent-voters to include railway employees.[20]

Nevada has introduced two or three innovations in connection with absent-voting. (1) Applications for an absent-voter's ballot may now be made by telegram, as well as by letter or in person. (2) A "new and independent section" has been added to the act of 1921, which requires

[16] *Laws of Montana, 1923*, Ch. 151.

[17] *Laws of Utah, 1923*, Ch. 99.

[18] *Laws of Washington, 1923*, Ch. 58.

[19] *Minnesota Session Laws, 1923*, Ch. 108.

[20] *General Laws of Oregon, 1923*, Ch. 53. Acts amending previous absent-voting laws in comparatively unimportant details, were also passed in Florida (1920), Virginia (1922), and Texas (1923); see *General Statutes of Florida, 1920*, I, §§368 ff; *Virginia Acts of Assembly, 1922*, Ch. 505; and *General Laws of Texas, 1921*, ch. 113; *Ibid., 1923*, Ch. 149.

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any person who has been "physically and corporeally" (!) absent from his voting precinct for six months immediately preceding the date of an election in which he wishes to vote *in absentia* (except students and persons in military or naval service) to reregister in person before he can obtain an absent-voter's ballot. (3) All persons, furthermore, who have voted *in absentia* at the last preceding general election are also required to reregister in person; otherwise, their names are to be stricken from the voting lists. These last two requirements will undoubtedly occasion a good deal of inconvenience to certain classes of absent voters, especially those who happen to hold positions under the federal government.

Nevada also appears to be the first state to authorize voting by mail by persons who are not absent from their home precincts and are not kept from the polls by sickness or physical disability.[21] This privilege is restricted, however, to voters who reside in precincts having less than twenty voters. The main purpose of this law evidently is to avoid the trouble and expense involved in establishing polling places and appointing election officers in the sparsely settled portions of the state. Such "mailing precincts" are to be designated by the various boards of county commissioners in advance of elections and primaries, and no polling places are to be established or polling officials appointed in such mailing precincts. A voter residing there may do one of two things: he may apply to the county clerk for an "official mailing ballot" which he must mark secretly and without assistance, and return to the county clerk not less than ten days before the day of the primary or election; or he may appear in person before the "central election board" at the county seat, while the polls are open, and there cast his ballot in person. The central election board, just mentioned, is appointed in each county by the board of county commissioners, to receive and count the ballots mailed to the county clerk by the voters of the mailing precincts in the county. The rules governing opening and counting the mail ballots are so drawn as to protect the secrecy of the ballot.[22]

[21] *Laws of Nevada, 1923*, Ch. 207.

[22] It is reported that the State Tax Association actively sponsored a bill in the Montana legislature in 1923, which provided for the adoption of a much more comprehensive system of voting by mail in that state. Student of election systems will find much interesting material relating to absent-voting and other forms of voting by mail in the publications of the Mail Ballot Movement of Chicago, mimeographed and distributed by the More Democracy Press, 104 West Monroe St., Chicago.

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The provincial legislature of Ontario in 1923 passed an act which enables railway employees and commercial travelers who expect to be absent on the day of the annual municipal election to vote before the regular polling. Instead of providing for a system of voting by mail, the Ontario law requires a poll to be held at the city or town hall from 9 a.m. to 5 p.m. for three days (Sundays excepted) immediately preceding the election.[23]

P. O. Ray.

Northwestern University.

The Alabama Presidential Primary Law. The Alabama Presidential Primary Law, which became effective September 13, 1923, has received widespread comment. It was apparently passed by the Alabama legislature, which is Democratic by a large majority, to accord to Senator Underwood the privilege of selecting personally the delegates who would go to the Democratic National Convention to vote for him.

Known as the Verner Bill, it has the following provisions. Whenever a citizen of the state of Alabama is a candidate for the nomination of any political party for President of the United States and files his declaration on or before January 1 of the year in which a nomination is to be made, a primary shall be held on the second Tuesday in March for the expression by such political party of its preference of the candidates for such nomination. This presidential preference primary election is to be conducted in the same manner as in the case of primary elections for the nomination of state officers.

The law further provides that whenever a candidate, who is a citizen of the state of Alabama, shall receive a plurality of the votes, he shall select the members of the state delegation to the national convention. Two delegates and two alternates shall be appointed from each congressional district, and four delegates and four alternates shall be appointed from the state at large.

The evident purpose of the law is to aid Senator Underwood, but it will also have the result of compelling candidates living outside the state, who desire to have privilege of naming the delegates to the convention, to run by proxy in order to control indirectly the delegates. It will, as well, turn the selection of delegates from the will of the party voters to an individual chosen by them. Five candidates filed their names.

[23] *Statutes of Ontario, 1923*, Ch. 44.

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The operation of the law will be awaited with interest, especially as the Republican National Committee has indicated that it will not recognize the law and also that the number of delegates designated by that committee to Alabama does not coincide with the number provided for in the law.

F. C. CRAWFORD.

Syracuse University.

State Legislative Memorials to Congress. One of the by-products of some forty-odd legislative sessions in 1923 was a long series of resolutions and petitions on miscellaneous topics forwarded to Washington from nearly all of the states whose legislatures met. Most of such memorials deal with matters of state interest, frequently with questions of property or other matters in which both state and federal authority are concerned. Some are interesting because a little out of the ordinary. Minnesota, for example, sent a memorial requesting that Congress provide additional facilities at the federal Leper Hospital in Carville, La. inasmuch as there was a waiting list of a hundred and twenty victims of the disease, thirteen resident in that state. Tennessee apparently took alarm at the proposed removal of the statue of Andrew Jackson from its present site near the White House and memorialized Congress for its retention. Mississippi asked for the establishment of a hospital for veterans afflicted with Bright's disease. New York asked for such modification of the prohibitory laws as would legalize the sale of beer and light wines, and Massachusetts showed her superior intellectual interest by calling for measures preserving and protecting the country's public records. Four states asked that the interstate commerce commission provide statements of the value of railroad property within the confines of each state. Illinois asked for investigation of the rise in the price of sugar. Massachusetts and Wisconsin endorsed a soldier's bonus. Texas and New Mexico asked recognition of the Obregon government in Mexico.

Several topics occur frequently enough to indicate either considerable interest in the various states, or else enough activity on the part of interested organizations to secure adoption. Twelve memorials dealt with various aspects of the railroad situation, most of them urging rate reductions or repeal of the Esch-Cummins Law. Ten requested steps to end the issue of tax exempt securities. Seven urged relief for agriculture in view of existing depression and four pointed out that silver mining was also in need of some form of assistance. Seven dealt with

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veteran's rehabilitation, six recommended the acceptance of Henry Ford's offer for Muscle Shoals. Three urged immigration restrictions, Oregon giving among other reasons the alleged fact that "the cost to the government of our alien population, by reason of the violation of the eighteenth amendment and the Harrison narcotic act, as well as of the Volstead act, by thousands of these aliens is burdensome in the extreme." New York, on the contrary, requested a more liberal policy. Four states urged the completion of the Great Lakes-St. Lawrence waterway. Minnesota and Missouri opposed the establishment of branch national banks.

The Wisconsin legislature seems to have given time to more national topics than any other state. Eighteen memorials were presented soon after the opening of the present session of Congress in addition to several filed before adjournment in March, 1923. Besides an endorsement of Senator La Follette, there were recommendations for constitutional amendments allowing the earlier seating of senators and representatives, providing a simpler amending process, election of federal judges for limited terms, a guarantee of the right of associations and collective bargaining by agricultural organizations, another to prevent sending the militia or drafting for service overseas. Other memorials recommended the repeal of the secrecy clause in the income tax law, reënactment of heavier surtax, excess profits, inheritance levies, amnesty for "political" prisoners, a national referendum on declarations of war, government ownership and operation of coal mines.

The record of recent legislative years shows that the last was about normal both in number and content of such measures. In 1919 there were one hundred and seven memorials; in 1921, one hundred and one; in 1923, one hundred and twenty-four. In 1921 the transportation question, including the Great Lakes-St. Lawrence project was the most popular subject. In these three biennial periods Montana has submitted a total of forty-two memorials and Wisconsin is a close second with forty-one. It is interesting to note, in passing, that the Louisiana Constitutional Convention of 1921 also memorialized Congress on the need for federal action on the subjects of speculation in agricultural products, intra-state freight rates, highway appropriation, and the transmission of betting information.

Memorials fall into fairly well-defined classes:

1. Matters where property interests of both state and nation are involved. Such memorials are common in Western states where there are large federal reserves and the question of taxation causes perennial irritation.

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2. Matters where federal legislation has some special bearing on local welfare. The frequent memorials on the transportation situation come under this head. In 1921 Colorado memorialized Congress on the need of admitting Canadian lumber on easier terms, and Oklahoma urged a heavier duty on oil and oil products. The proposed "truth-in-fabric" law has been endorsed by several wool-producing states and the mining states have urged relief for the producers of precious metals in view of conditions in that industry.

3. Matters of national or international interest on which the legislatures desire to express opinions. In 1919 there were several memorials on recognition of Irish independence and others endorsing the proposed Jewish state in Palestine. In the same year, the anti-Red hysteria was reflected by memorials on immigration restriction and the deportation of dangerous aliens.

4. Miscellaneous matters for which there is no logical explanation, but which are apparently adopted to satisfy some member, faction, or state organization. It is interesting to speculate on the genesis of such a memorial as that of the last Nevada legislature on the need of a federal training school for young men intending to enter the foreign service, or the North Dakota memorial of 1921 in favor of adopting the metric system.

Years ago Mr. Bryce commented on these activities as follows: "The passion for what is called 'resoluting' is strong everywhere in America and an expression of sympathy with an oppressed foreign nationality or of displeasure at any unfriendly behavior of a foreign power, is not only an obvious way of relieving the feelings of the legislators but often an electioneering device which applies to some section of the state voters. Accordingly, such resolutions used to be common and are, though of course quite irregular, quite innocuous." This, like most of Mr. Bryce's observations, still holds true. "We strive to please" is undoubtedly the motto of many legislators, providing the effort does not involve too much political danger. Memorials on serious controversial topics, like Prohibition or the League of Nations have not been numerous. The right of petition is still valuable but the state legislature cannot be considered as an especially valuable medium for its exercise.

WILLIAM A. ROBINSON.

Dartmouth College.

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The Missouri Constitutional Amendments. At the special election on February 26, 1924, the voters of Missouri ratified six and rejected fifteen of the twenty-one constitutional amendments submitted by the constitutional convention. Of those adopted all but one fall in the group which, as indicated in the last number of the REVIEW (Vol. XVIII, pp. 18–33) deals with relatively unimportant matters. They include number four, providing additional funds for a soldiers' bonus; number eight, changing the affirmative vote for conviction on impeachment from two-thirds of the senators present to two-thirds of all elected; number eighteen, extending the power of the legislature to provide for removal from office and placing restriction upon nepotism in public offices; number nineteen, relating to public improvements in Kansas City and number twenty-one dealing with provisions in the schedule for carrying into effect the amendments that were adopted.

The only important amendment ratified was number nine containing four changes. One strikes out the existing provision under which aliens, who have merely declared their intention to become citizens, may vote. Another expressly denies the suffrage to idiots and insane persons. It is also provided that ballot boxes may be opened and examined in grand jury investigations and in all trials in which the violation of any law relating to primary or other elections is at issue as well as in a contested election, the only case permitted under the existing constitution. Finally, the legislature is now required to regulate registration of voters in all cities of more than 10,000 population, instead of being merely permitted to provide for this in cities with more than 25,000 inhabitants.

The measures approved furnish only slight evidence of appreciation by the voters of the constructive work of the constitutional convention. While number one, which provided for elimination of technicalities in indictments, and number eleven, containing significant changes relating to cities, were lost by relatively small majorities, the important amendments relating to the legislature, executive, judiciary, taxation and education were overwhelmingly defeated. The total vote was slightly less than 340,000 or only a little more than one-third of the total vote cast for state superintendent of public schools in 1922.

The popular result was due to a variety of causes. Indifference and ignorance account for the small vote. While the members of the constitutional convention were in the main conservative, their investigations and discussions had convinced them of the necessity for the proposed changes. It proved difficult and for the most part impossible to secure similar enlightenment among the voters. There was con-

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siderable prejudice among voters against the convention because of the long period during which it was in session and the great expense incurred. Economic depression in rural communities was another contributory cause particularly as regards proposals affecting taxation.

More specific reasons existed in the case of particular amendments. Practically all of the judges of the supreme court and many prominent lawyers were opposed to the judiciary amendment and active opposition was organized. Misleading statements regarding the taxation amendments were circulated and it was asserted that most of these had their origin in secret associations of large taxpayers. Amendment number fifteen relating to education suffered attack from several sources. The St. Louis School Patrons Alliance feared that the new state board of education would interfere with local control of the St. Louis schools. A slight change in language regarding school attendance led large numbers of Catholics to fear that the change would open the way for compulsory attendance at public schools. There was also objection to the elective character of the state board of education.

While the immediate result is discouraging, it can not be asserted that it indicates that the voters are entirely satisfied with the present constitution. An analysis of the vote shows that considerable discrimination was exercised by voters who went to the polls. On the other hand, some of the proposals were defeated because opposition to one or another amendment induced many voters to oppose all. It is probable that efforts will be made in the near future to secure legislative submission of some of the propositions.

ISIDOR LOEB.

University of Missouri.

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FOREIGN GOVERNMENTS AND POLITICS

EDITED BY FREDERIC A. OGG

University of Wisconsin

The British Elections of December, 1923.[1] Not only were the results of the British national election of last December momentous for the British people themselves, but it may be doubted whether any other election in the country's history ever excited as much interest in foreign lands. The United States was much concerned at the possibility of Great Britain erecting a tariff wall around not only the British Isles but the British Empire as well. The dominions were vitally interested. The whole of Europe awaited with increasing anxiety the decision of the British electorate, as upon it depended to some degree, at any rate, the next step of the British government in the settlement of the all-important problem of reparations upon which the reconstruction of Europe depended.

What were the salient issues? The Laborites supported, as in the previous election, the nationalization of certain industries, and the capital levy, to apply only to incomes of over £5,000 a year, of which the entire proceeds were expressly reserved for paying off the war debt. Labor opposed protection and favored a far-reaching program of social reform, more particularly with reference to education. The Liberals staunchly supported free trade, which carried with it the repeal of the McKenna and the Safeguarding of Industries acts, because they insisted that these were really protective tariff laws in disguise. They, too, took a firm stand in favor of extensive social reforms, more particularly as to housing, small holdings, and a closer "partnership between labor and capital."[2] The Conservatives committed themselves to moderate, selective protection, and to imperial preference. They made it clear that they would not tax food, but insisted that they must have a tariff policy, not only to protect Great Britain against dumping, but to enable her to bargain with other nations for a reduction of their tariffs against British products.

[1] The author of this article was in England during the period of the elections.

[2] *Weekly Manchester Guardian*, Nov. 23.

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All three parties were exceedingly active in nominating candidates. The Conservatives nominated more than five hundred, and the Liberals and Laborites supported about four hundred and fifty each. The result was that over two hundred and fifty constituencies had three or more candidates. Fifty candidates were returned unopposed, of whom thirty-five were Conservatives.

Speaking strictly, the main fight lay between modified protection with imperial preference on the one hand, and free trade on the other. Although Labor championed the capital levy, it also favored free trade. Immediately, the newspapers were filled with arguments over the high wages, high prices, tariff wars, dear food, and vested interests,[3] which have been only too familiar to Americans. The clash of statistics was heard in the land, and almost identical figures were quoted to prove contentions diametrically opposite, until one was reminded of the statement about statistics attributed to Disraeli. The struggle really centered around the success of protection in the United States. In the main, election audiences preferred facts to eloquence, and at times were at least a trifle unkind to speakers who had not at hand the figures to support their statements.

Labor naturally worked most energetically in the working-class constituencies, where discontent was rife over the prevalence of unemployment, accompanied, of course, by intolerable living conditions both as to food and housing. At the beginning of the canvass, the weather was bitterly cold, and the intense physical suffering must have cost the Conservatives many votes and crystallized opinion among the lower orders, inasmuch as Labor's manifesto favored an extensive program of internal improvements, together with state ownership and control of mines, railway service, and electrical power stations. The Labor leaders saw clearly that the party had a great asset in the exceptional discomfort of the lower classes. The obvious sincerity of the Labor leaders was refreshing, and their frankness disarmed criticism. Many Britishers were weary of the old type of politics and believed with the Laborites that "Mr. Lloyd George's peace, Mr. Bonar Law's tranquillity, and Mr. Baldwin's simplicity . . . were ruining Europe and with it the British markets."[4]

[3] Mr. Redfern, *Manchester Guardian*, Dec. 5; Lloyd George at Camberwell, Dec. 5; *Manchester Guardian*, Dec. 4; *Daily Herald*, Dec. 5; Lord Grey at Portsmouth, Dec. 3; Lord Charnwood, letter to *Times*, Nov. 30; Editorial, *Daily Chronicle*, Nov. 23. See also *Morning Post*, Nov. 21 and 23.

[4] Sir S. Olivier, *19th Century*, Jan., 1924; Father McLaughlin, *19th Century*, July, 1923.

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In supporting the scheme of a capital levy, Labor called attention to some of the large unearned incomes in the coal industry (already under suspicion), citing figures to show that six prominent peers drew more than half a million pounds yearly from mining royalities and way leases.[5] Frequent and spirited attacks were made upon war profiteers, and it was asserted that the number of incomes of £5,000 and over had increased approximately sixty per cent since 1914, while the real income of the wage-earning and salaried classes was no higher and in a "great proportion of cases substantially lower.[6] Throughout the canvass, the labor men emphasized the vital necessity of reducing the national debt, because Great Britain was spending ten times as much in interest on war loans as on education, and twelve times as much as on old age pensions.[7] To a certain type of mind, the economic arguments of Labor seemed unanswerable. Its policy seemed to lead to a redistribution of wealth, which to many was both a proper and a justifiable attack upon a detested plutocracy created by the war. Besides, the capital levy was expected to extend to less than one-half of one per cent of the population.

The Conservatives had the most difficult task, for upon them fell the burden of proof in favor of protection. They dared not come out boldly for protective tariffs, or even for any considerable increase in imperial preference. Their program, therefore, was very vulnerable. Although Mr. Baldwin's manifesto specifically stated that it was not his "intention," in any circumstances, to impose any duties on wheat, flour, oats, meat (including bacon and ham), cheese, butter, or eggs, the Liberals and Laborites insisted that a system of tariffs would mean higher prices all around; for taxes upon other foods would inevitably cause a rise in the cost of commodities expressly excluded. Throughout, these two parties insisted that the Conservatives wanted to introduce the thin edge of the wedge of thoroughgoing protection.[8]

The Government's campaign, moreover, suffered severely from the lack of high-powered platform oratory and of enthusiastic, consistent support from the Conservative press. Lord Curzon's duties at the Foreign Office made it impossible for him to take any part in the canvass,

[5] *Daily Herald,* Dec. 3.

[6] Sir S. Olivier, *19th Century,* Jan., 1924.

[7] S. L. Murray, *Fortnightly Review,* Dec., 1922, *Daily Herald,* Dec. 3.

[8] The Liberals showed from the statements of Conservative ministers that they must collect a revenue of £60,000,000 on imports worth £200,000,000, or 30 per cent, which appeared very high, indeed, to free trade England. W. M. R. Pringle, *Contemporary,* Jan., 1924.

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and although Austen Chamberlain and Lord Birkenhead gave active support, the opposition of the "die-hards" to both had been such as to prevent either developing in their audiences any great amount of enthusiasm in favor of protection.[9] Mr. Chamberlain also labored under the difficulty which he frequently expressed, namely, that protection and imperial preference as laid out in the party manifesto did not go far enough for a son of Joseph Chamberlain. Both statesmen, moreover, were under the suspicion of being dominated by the press trust controlled by Lords Beaverbrook and Rothermere.

The history of political journalism affords no parallel to the gyrations of the sensational press during this canvass. The organs of Rothermere vied with those of Beaverbrook in their inconsistency. It can scarcely be said, however, that either came out unequivocally against the Government. That stand would have been intelligible. Neither did they oppose the Liberals, and at times they bestowed fulsome praise upon Mr. Churchill, Lord Birkenhead and Mr. Lloyd George.[10] They were successful in mystifying their readers in London and vicinity, so that despite their outspoken hostility towards Labor, they so increased the apathy of the bewildered Conservatives as to cause great numbers of them to absent themselves from the polls.[11]

The electoral contest was intensely interesting. The existence of three vigorous parties with numerous candidates in the field left the results much in doubt. Cartoons and posters, many of them very skilful in their appeal, went out from party headquarters in great quantities. The Liberals, indeed, sent out interesting materials from both the Independent and National Liberal publicity departments. The Labor party did well both with the *Daily Herald* and other publicity material; their posters being particularly adapted to appeal to the working classes. The Liberals must have spent large sums for campaign literature. Their posters and pamphlets were most attractive, although they lacked, for the most part, the peculiarly personal appeal of the Labor propaganda. The *Liberal Magazine* furnished a satisfactory brief account of election developments, together with neat summaries of the principal political speeches of all three parties. The material sent out by the Conservatives was well organized and carefully done. A few of the pamphlets were excellent but a trifle too heavy for

[9] *Manchester Guardian*, Nov. 19; *National Review*, Jan., 1924.

[10] Garvin, *Observer*, Dec. 9; *New Statesman*, Dec. 1; *Weekly Manchester Guardian*, Dec. 7.

[11] Sir A. Hopkinson, *Contemporary*, Jan., 1924; *National Review*, Jan., 1924.

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people whose daily predigested pabulum was to be found in the *Daily Mail*.[12]

Until the eve of the election, no politician was willing to hazard any definite forecast of the results. The stock exchange stood for a time around 50 majority for the Conservatives, but its general average was 38. Lord Younger estimated Mr. Baldwin's majority at 30, a loss of nearly 50.[13] The *New Statesman* (Dec. 1) would only predict that the Liberals would be stronger than in the previous parliament, though it held out the pious hope that all three parties might return to Westminster approximately in equal strength. Labor felt confident of increasing its representation. Sidney Webb believed at the beginning of the poll that the new house would have about 288 Conservatives, 175 Laborites and 150 Liberals.[14] Two days before the election, J. H. Thomas prophesied that the result would be a stalemate, and an official at Labor headquarters claimed at least 171 members.[15]

Let us attempt to analyze the actual results, which appear statistically: Conservatives 257; Labor, 192; Liberals, 158. Some 75 per cent of the electorate went to the polls (a gain of 1 per cent over 1922). Of the fifteen and a half million voters, the Conservatives polled five million, eight hundred thousand—somewhat less than 40 per cent; Labor, four million, seven hundred thousand—a little more than 30 per cent; the Liberals, about one hundred and fifty thousand votes below Labor, somewhat less than 30 per cent.[16] In the turnover the Government lost only about 40,000 supporters, and the Opposition gained something less than 400,000, mostly at the expense of the independent candidates,[17] so that a decrease of less than one-half per cent of their total vote caused the Conservatives to lose 90 seats.

This result was partially due to the large number[18] of triangular contests (263) in which the successful candidate often received little

[12] The statements in this paragraph are based upon an examination of all the important posters, pamphlets, and broadsides issued by the national organizations of the three parties.

[13] *Weekly Manchester Guardian*, Dec. 7; *New Statesman*, Dec. 8.

[14] Webb said later in the election that he gave the Liberals too many.

[15] *Manchester Guardian*, Dec. 6 and 7. The *Nation* (Dec. 1) was too cautious to make any definite prediction. The *Times* (Dec. 3) was equally careful.

[16] *Nation* and *Spectator*, Dec. 15; *Morning Post*, Dec. 8.

[17] *Times*, Dec. 27; *Spectator* (Dec. 15), *Observer* (Dec. 9) and *National Review* (Jan., 1924) gave the Conservative loss as 20,000, but the *Weekly Guardian* (Dec. 14) gives 76,000. George Cockerill estimated that the Conservatives gained 40,000 votes. *Times*, Dec. 27.

[18] *Manchester Guardian*, Dec. 3. The *Sunday Times* (Dec. 9) gave 254.

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more than one-third of the votes in his constituency. The number of minority members totalled 213, of which 31 were in the London area, where Labor won 14 seats in that way.[19] Of the seats that changed hands in the election, more than half were in triangular contests, Labor gaining more than two-thirds of its new seats in this manner. In general, the Liberals suffered most in these three-cornered fights. Another interesting outcome of such contests was the small majority of a considerable number of successful candidates. Sixteen were elected by an excess vote of 90 or less, eight of them with less than 50. Curiously enough, of the ten candidates receiving a majority of 10,000 or more, Labor had six, including the three highest.[20]

Outside of the great rebuke administered to the Conservatives, one of the more interesting and significant results of the election was the success of eight women, fairly distributed among the three parties,[21] and three of them peeresses. It is true that there were 39 women candidates, but there had been 33 in 1922, of whom but two were successful.[22] More significant still was the large accession to the Laborites—despite the miracle of Liberal unity; for they received 256,000 more votes than in 1922 and gained more seats than did the reunited Liberals, polling almost twelve times as many votes[23] as in December, 1910, and increasing their members from the London area[24] from 9 to 22.

From the point of view of personalities, the outstanding result was the heavy blows dealt to Lloyd George's followers. Excepting the

[19] In 19 constituencies, won by Labor, their total vote was 173,000 to their opponents 229,000. It is well to note, moreover, that despite the fact that the Conservatives polled less than 600,000 votes (about 27 per cent) more than the Liberals in triangular contests, they actually secured two and a quarter times as many seats. *Sunday Times*, Dec. 9.

[20] *Observer*, Dec. 9.

[21] *Weekly Manchester Guardian*, Dec. 14; *Observer*, Dec. 9. The Conservatives and Laborites had three each. This gain of five came "as a surprise to all parties," said the *Spectator* (Dec. 18), "For our part, we think it one of the best features of the election that such women as the Duchess of Athol, Lady Terrington, and Miss Margaret Bondfield . . . . should have been returned to parliament."

[22] *Times*, Nov. 25. Mrs. Philippson was returned later in a by-election. Not one of the retiring women members lost her seat.

[23] Yet they secured less than five times as many seats. Sir S. Olivier, *19th Century*, Jan., 1924; A. Ponsonby, *Contemporary*, Jan., 1924; *Weekly Manchester Guardian*, Dec. 14; *Observer*, Dec. 2. They polled in 1923 nearly seventy times as many votes as in 1902. *Nation*, Nov. 2.

[24] *Observer*, Dec. 9.

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popular Welshman, himself, the most important National Liberals were defeated at the polls. Most conspicuous of all was the defeat of Churchill, the brilliant debater, and again by a Laborite.[25] The wealth of Sir Alfred Mond ("the free imports multimillionaire") availed him not against a Laborite. Hilton Young, unfortunately, was also in the list of defeated Lloyd Georgians, which included Sir Hamar Greenwood and McCurdy,—Dr. McNamara escaping extinction by the narrow margin of 80 over Labor.[26] In short, the "National Liberals have been almost eclipsed," being cut down nearly one-half so that "Asquith's following is entirely predominant."[27] Some have seen in this repudiation of his followers a definite reaction against Lloyd George himself, and particularly a revulsion of feeling against his platform methods. One writer reflects upon the Lloyd Georgian defeat that this leader "had shown in false metaphors a most attractive revival of his 'teens, and had been the only Charlie Chaplin of the election harlequinade.[28] Unquestionably the acceptance by many of the "press conspiracy" story must have injured the chances of Lloyd George's personal following.

What are the reasons behind the election results? The Conservatives lost comparatively few votes, and neither the Liberals nor Laborites gained any large proportion of the electorate; yet, due to the great number of candidates and the large proportion of triangular and four-cornered contests, there was an extensive change in the allocation of seats. The Conservatives were in luck in 1922, as they were never entitled on basis of the votes cast to a majority over their rivals. In 1923 the fickle goddess was on the side of Labor.

Another factor affecting the result was the disagreement among the Conservatives. The curious attitude of the newspapers of the press trust unquestionably weakened the Conservative campaign.[29] The party was not a unit as to its foreign policy, many members being definitely pro-French, and still others just as definitely pro-German. Upon the leading issue of protection, the party ranged from staunch free traders to the thoroughgoing protectionism set forth by Joseph

[25] *National Review*, Jan., 1924; *Times* (editorial) Dec. 8; *Observer*, Dec. 9.

[26] W. S. Sparrow, *19th Century*, Jan. 1924; *National Review*, Jan. 1924.

[27] *Times*, Dec. 8; *Observer*, Dec. 9.

[28] W. S. Sparrow, *19th Century*, Jan. 1924. See also J. W. Borden's article in same number. *National Review* (Jan. 1924) said that Lloyd George's personal following is not more than twenty in the present parliament. The party, however, is unquestionably strengthened by the election of such men as Masterman, E. D. Simon and Ramsay Muir. *Nation*, Dec. 15.

[29] Sir A. Hopkinson, *Contemporary*, Jan. 1924; *National Review*, Jan. 1924.

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Chamberlain. In addition there was the Coalition "rump" and Lord Balfour, whose attitude was not encouraging.[30] Facing the divided, confused Conservatives, poorly equipped with platform orators, were the enthusiastic, unified Liberals and an excellently disciplined Labor party,[31] which believes in spreading its gospel twelve months in the year.

A third factor in the Conservative defeat was a certain disgust for the government's foreign policy, which permitted British prestige to fall so low and, at the same time, leave in a nebulous state an important diplomatic issue which indirectly affected all domestic problems. As in the days of Gladstone, "ignominious vacillation" in diplomacy is a thing the British people will not long endure, and they began to feel that if they could only exchange premiers with France for a fortnight, British diplomacy might once more become a decisive factor in European politics.

A fourth reason for Baldwin's discomfiture was the inherent Anglo-Saxon dislike of being rushed. Most people did not want another election and saw no adequate reason for having one. Hadn't they voted Conservative only a year before? Wasn't it bad enough to think of politics again so soon, without being rushed headlong into an election before Christmas without any time for reflection, just because their politicians did not know what to do next in either domestic or foreign affairs? This was indeed more than the stolid Britisher would endure.[32]

The fifth factor was what the Conservatives termed the "dear food cry." Many Conservative candidates insisted that the decisive issue in their campaigns was the general fear that protection would not only make food prices higher, but cause a general rise in prices which would directly affect all classes who lived on fixed incomes or had but a narrow margin of subsistence. In this group must be classed all pensioners; and to them both Liberals and Laborites applied themselves so zealously, and to such good purpose, that the Conservatives complained of the distortion of Mr. Baldwin's manifesto.[33]

[30] *Spectator*, Nov. 24; *Evening News* (editorial) Dec. 7. *The Spectator* feared the party might have to go to the country in three sections. See also *Sunday Times*, Dec. 9; *Weekly Manchester Guardian*, Dec. 7.

[31] Sir A. Hopkinson and A. Ponsonby. *Contemporary*, Jan. 1924; *Times*, Dec. 12.

[32] Sir A. Hopkinson, *Contemporary*, Jan. 1924; *Times* and *Evening News* (editorial) Dec. 7. One writer says that Baldwin's courage in rushing the election "is magnificent but surely it is not politics." *New Statesman*, Dec. 1.

[33] Sir E. Cecil, *Contemporary*, Jan. 1924; Sir A. Hopkinson, *ibid*; *Times* (editorial) Dec. 8; *Observer*, Dec. 9.

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Unquestionably the most important single factor in deciding the election was the misery and discontent of a large section of society, which voiced its discontent against hunger and unemployment by voting for Labor, because it promised them more than either of the older parties. Twelve months of "tranquillity" had increased the sullenness of the working classes, because it had not decreased unemployment or materially bettered housing conditions. The same government, moreover, had economized at the expense of their children's future by cutting appropriations for education to the bone, while continuing expensive imperialistic ventures and permitting the liquor trade to fatten its dividends off the pennies of the poor. They did not like the close relation of some of the Conservative leaders with "the trade."[34] This has been strongly emphasized by Lady Astor, who believes with Viscount Younger that the women in particular voted against the Conservatives; but she goes further by accounting for it not only on the ground of dear food but by the antagonism of certain conservative elements towards progressive social reforms, particularly those affecting women and children.

The people were puzzled as much by the results as they were by the hurry of the canvass. The policy of protection was frowned upon by the electorate, but the Conservatives who championed the issue won five-twelfths of the seats—more than either of their rivals. The capital levy of the Laborites received even shorter shrift from the voters; yet they elected only slightly less than four-twelfths of the members of the Commons. Free trade presumably received a large majority, yet the Liberals, who steadily championed it, won fewer seats than either of their rivals. The Conservatives, having lost the confidence of the country and the Commons on their own issue of protection, the King called upon the official opposition, the Labor party, to form a government, despite the fact that its capital levy was even more definitely repudiated by the nation than was protection. The Liberals, having fewer votes in the Commons than either, were not asked to form a government, although their main policy was the only one not rejected by the electorate. This was the inescapable constitutional situation unless two of the three parties should unite to form a coalition. This appeared unlikely, as none of the parties seemed willing to sink its individuality or lose its liberty of action. Asquith was approached informally with the suggestion that he should come into a coalition

[34] *Times*, Dec. 12. Many people resented the elevation of Sir George Younger to the peerage soon after the election of 1922, because of his great brewery interests.

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ministry, or even become the head of it; but he refused, saying that he would not lift a finger to save the government which had carried out so disastrous a policy in foreign and domestic affairs.[35]

What are some of the fruits of the election? For one thing, it has made clear to the politicians that an early reform of the House of Lords is highly imperative, and that some expedient such as proportional representation is a necessity if the government is to function smoothly. More important seems to be the lesson that it is unwise for any party to neglect the physical welfare of any considerable proportion of the people, unless it expects to suffer their overwhelming disapproval at the polls. It appears rather obvious that the new ministry must attend most sedulously to social reform and work faithfully for the amelioration of unemployment and housing conditions. It seems fairly certain, too, that no party will again go to the country with so ambiguous a policy as did the Conservatives, particularly in so far as it affects the women. For a few years, at least, political parties will strive to improve Great Britain's diplomatic position, so that the average voter need not resent at the polls the loss of prestige abroad. Moreover, it is clear that for the present, both protection and the capital levy must be shelved by the Conservatives and Laborites. No party in the immediate future will dare rush the people into an election. The press barons are unlikely to assume so indefensible a position in any future canvass.[36] Finally, the future of the three British parties is very much in the dark, although it seems highly probable that they will continue to exist side by side, as each party at the present moment is exceedingly jealous of its position.

WILLIAM THOMAS MORGAN.

Indiana University.

The Irish Constitution. The Constitution of the Irish Free State is the result of a political drama extending over a period of eight years. From the Ulster Rebellion and the Home Rule Act of 1914, the action has been tense and almost continuous. The threats and concessions of that time played into the hands of the radical Sinn Fein, and with the Easter Rebellion of 1916 it became evident that the issue was no longer

[35] *Times* Dec. 19; *Nation*, Dec. 15; The *Times* (Dec. 9) printed the opinions of ten of the leading newspapers as to what should be done on account of the stalemates. Five favored Liberal-Conservative coöperation; four, a Liberal-Laborite working agreement. The *Times* was doubtful. See also *Spectator*, Dec. 15.

[36] *Observer*, Dec. 9. Mr. Garvin was most indignant over the attitude of the press trust.

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one of home rule but of independence. The government at London, however, did not realize this until once more the traditional methods of settlement had been tried. But when the majority in southern Ireland adopted a policy of noncoöperation with the principle of the Government of Ireland Act of 1920, more radical steps proved necessary. Then it was that the astute Lloyd George summoned Sir James Craig, premier of Ulster, and Eamon De Valera, as the leader of the south, to a conference in London. From this conference, after many hazardous moments, came a treaty signed by representatives of Great Britain and of Sinn Fein on December 6, 1921.

By the terms of this document, there was to be established in Southern Ireland a provisional government, and a provisional parliament, composed of those persons who had been elected under the Act of 1920. This was the first recognition of the Irish Free State, which had existed, rather precariously, and illegally, since 1916. With the ratification of the treaty by the British Parliament, the extra-legal Dail Eireann of the Sinn Fein Republic, and the Provisional Parliament, the Irish Free State, on January 16, 1922, came into being.

Meanwhile, a committee headed by Michael Collins had been at work preparing a permanent constitution for the new political entity. Their first draft, presented to the British Cabinet in June, was by it rejected; but a second draft, modified to meet the requirements stipulated in the treaty, proved acceptable. This draft was then ratified by the parliaments at Dublin—after a bitter fight—and at London; and on December 5, 1922, it received the royal assent.

A student of the Irish Constitution is at the outset faced with a rather puzzling problem. What is the legal status of the document? Obviously it differs from such a constitution as that of the United States, which stands as its own sanction. Nor is it like the fundamental law of Canada, a self-contained act of the British Parliament, resting on the sovereignty of the latter. The Irish Constitution is neither; it is both supreme and subordinate. Subordinate in that it expressly is made legally inferior to the treaty of December 1921;[1] supreme in that (1) it creates the legal status of that same treaty, and (2) embodies the treaty in a schedule to the Constitution. In short, the once familiar concept of a self-limited sovereignty seems to have received explicit recognition.

[1] See "The Preliminary to the Constitution," published in the N. Y. *Nation*, July 26, 1922.

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The document is, for these times, brief. Exclusive of the article dealing with transitory provisions, the constitution contains approximately 5800 words. It is divided into five 'sections,' containing 79 'articles.' These sections deal with (1) fundamental rights, (2) legislative provisions, (3) the executive, (4) the judiciary, and (5) transitory provisions.

The Bill of Rights contains guaranties not only for the individual but also for the state. The former include liberty of person, of dwelling, of speech, assembly and association; the right to "free elementary education," and kindred matters.[2] With regard to the state, Article 1 declares, in accord with the treaty, that 'The Irish Free State is a co-equal member of the community of nations forming the British Commonwealth of Nations.' Article 11 vests the control of natural resources in the state. In addition, Section I defines citizenship, and guarantees freedom and equality of religious belief and worship. Irish is made the national language.[3]

The longest section of the Constitution deals with the structure and powers of the legislature. This body consists of the King, a Chamber of Deputies (Dail Eireann) and a Senate (Seanad Eireann). The life of a parliament, unless sooner dissolved, is four years from its first meeting. Annual sessions are required. Subject to the action of the Governor General, the Dail fixes the date of the opening and, with the consent of the Senate, the date of the conclusion of sessions.[4]

The Dail is composed of members chosen, on principles of proportional representation, by all citizens, without distinction of sex, twenty-one years of age. Plural voting is forbidden. The number of members is to vary, within ratios based on population, with decennial redistricting of constituencies. 'The Senate shall be composed of citizens who have done honor to the nation by reason of useful public service or who, because of special qualifications or attainments, represent important aspects of the nation's life.'[5] Each university is entitled to two members; there shall be fifty-six others. Special provisions are made for the first Senate, so that twenty-eight of the membership is appointed by the premier and twenty-eight by the Dail. The terms of these first members are so

[2] Elsewhere in the constitution are found the guaranty of jury trial in criminal cases, prohibition of *ex post facto* legislation, and restriction of martial law to wartime.

[3] English is recognized as an official language.

[4] Elections must be held within 30 days after dissolution, and the new parliament must assemble within 3 days after the election. Article 27.

[5] Article 29.

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arranged that, in future, university elections will be held every six years; while one-fourth of the nonuniversity members are chosen every three years. The full term of a senator is, therefore, twelve years. For elections subsequent to the above introductory scheme, a novel method is established. The Free State forms one electoral area, in which, in accordance with proportional representation, the proper quota of senators are chosen by citizens thirty years of age. Candidates are presented to the voters in three ways: (1) The Dail nominates twice as many qualified persons as are to be elected. (2) The Senate nominates a number of persons equal to the number to be elected. (3) All persons who have been senators, including those whose term is expiring, may have their names placed on the ballot.[6]

The internal organization of the houses presents no novelties. Presiding officers in both cases are selected from and by the membership. The members possess the usual parliamentary privileges. The enactment of bills is governed by provisions modelled after the Parliament Act of 1911. The Senate can hold up a nonmoney bill no longer than 270 days, though the measure has passed the Dail but once. Money bills, certified as such by the chairman of the Dail,[7] can be considered by the Senate no longer than 14 days, after which the Dail, accepting or rejecting Senate amendments, has complete and exclusive power of passage.[8] The Senate is further subordinated to the Dail by the fact that, while measures may be introduced into the upper chamber, they, when amended by the Dail, are henceforth to be regarded as though initiated in that house; moreover, should such a measure be rejected by the Dail, it cannot be reintroduced in that session. The function of the Governor General in legislation is expressly made similar to that of the corresponding functionary in the Dominion of Canada.

Article 43 empowers the Parliament to establish 'subordinate legislatures' with powers of a limited nature. Further evidence of the influence of current political notions is found in Articles 44 and 53. The one allows Parliament to authorize the creation of 'functional or

[6] Vacancies in university members are filled by the university in question for the unexpired term. Other vacancies are filled by election of the Senate, such appointee to serve until the succeeding triennial election, at which a person shall be elected to fill out the original term of twelve years.

[7] Appeal from such decision is permissible, on demand of two-fifths of members of either house, to a committee of privileges, composed of three members of each house, with a judge of the Supreme Court as chairman. Their decision is final.

[8] On demand of the Senate, nonmoney bills before that body may be considered (but not voted upon) in joint session of the houses.

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vocational councils, representing branches of the social and economic life of the nation.' The other grants to Parliament the power to authorise such established councils to nominate certain members of the ministry. Parliament may, furthermore, provide for the use of the popular initiative for laws and constitutional amendments. Moreover, the Constitution itself establishes a popular referendum for measures that have encountered substantial but unavailing opposition in either or both houses of the legislature.[9]

The provisions dealing with the executive are probably the most novel. In the first place, the conventions of the British Constitution under which the cabinet system has become a matter of course are put into legal written form. In the second place, important modifications of that system of government are made. The cabinet, called the Executive Council, is expressly made collectively responsible to the Dail,[10] and its president, vice-president and two others, must be members of that body. These persons must resign when the prime minister loses the confidence of 'a majority in the Chamber.'[11] But there are to be other ministers, in number not more than eight. These are nominated from eligible persons by a committee of the Dail, approved by that body, and appointed by the Governor General. 'Such ministers shall be chosen with due regard to their suitability for office and should, as far as possible, be generally representative of the Irish Free State as a whole rather than of groups or of parties.'[12] These ministers cannot be members of Parliament,[13] but by virtue of their office possess all the rights of members of the Dail except the right to vote. They are individually responsible to that body, as are the other ministers, for the administration of their departments, and may be required by the Dail to attend its sittings and to answer questions. But their tenure is fixed; they serve for the life of the Parliament existing when they were selected. True, they may be removed, but only after a special legislative procedure, and only for specific nonpolitical causes.[14]

[9] Money bills and emergency measures are excepted. Article 46.

[10] There is one exception. The members of the Council who are members of the Dail are alone responsible for "all matters relating to external affairs." Article 54.

[11] Article 51.

[12] Article 52.

[13] Article 50 permits the Dail, on recommendation of the Premier, to "determine that a particular minister or ministers, not exceeding three, may be members of Parliament in addition to the four members of the Dail above mentioned."

[14] Article 53.

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This composite executive, under the nominal headship of the Governor General, is further complicated by the fact that the Dail directly appoints an auditor-general to control all disbursements and to audit all financial accounts. He reports to the Dail, and can be removed only "for stated misbehavior or incapacity" by concurrent resolution of the houses. He cannot be a member of the Parliament, nor can he hold other office.

The judicial establishment is less unusual. The details are to be worked out by Parliament under general principles laid down in the Constitution. Appeal to the Privy Council is retained; and the High Court and the Supreme Court of the Free State are given the power to determine the constitutionality of statutes of Parliament. All judges are appointed by the Governor General on the advice of the Executive Council. The more important are subject to removal only by concurrent resolution of Parliament; the tenure of the lesser officers is to be established by law.

Amendments of the Constitution may be made by Parliament, always subject to ratification by popular referendum. The measure is deemed ratified under the following circumstances: (1) that a majority of the registered voters participate, and (2) that either a majority of the voters on the register, or two-thirds of those voting, favor the proposal. This would seem to render change of the Constitution difficult.

Even such a resumé of the Irish Constitution discloses numerous interesting institutions. The makers of the instrument, in dealing with external relations of the Free State, were restricted by the provisions of the treaty of 1921; but that treaty imposed almost no limitations with regard to provisions for internal political mechanism and regulation. It is obvious that other schemes of government were used in the drafting of this one. Throughout the document are traces of the British Constitution, the British North America Act, the Constitution of the United States. A second source is found in current suggestions for political reform. Devolution is recognised; functional and proportional representation permeate the document. In short, Ireland has not only achieved 'Dominion status' within the British 'Commonwealth of Nations' but has offered to the world the prospectus of a most exciting political experiment in a most exciting milieu.

ALLAN F. SAUNDERS.

University of Wisconsin.

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The Constitution of China. On October 10, 1923, the permanent constitution of the republic of China was promulgated. The "Double Ten," already a national commemoration day, becomes fittingly the date of the long-awaited culmination of the constitutional movement inaugurated by the revolution of 1911. Although the national assembly was the same legislature which, sitting as a constituent body, completed the first draft of the constitution in 1913 and passed the larger part of it through its second reading in 1916–17, the actual periods devoted to committee work and discussion were limited to the time, not amounting altogether to three years, during which the assembly was permitted by military and political exigencies to remain in session. Chapters V and XII, dealing respectively with the division of national and provincial powers and with local government, although discussed widely by the public and given considerable attention in the drafting committee, passed their second and third readings with very little debate. The words of the new president, Ts'ao K'un, on taking the oath to support the constitution promulgated, at his wish, on the day of his inauguration, may be quoted: "It is, however, fortunate that the fundamental law of China has been completed just at the time when I take up office and that a definite path has thus been laid out for the conduct of state affairs." That part of the constitution which provides for the election of the president was promulgated in 1913. A new national assembly is to be convened on August 1, 1924; in the meantime the "Old Parliament" will continue to function in special session unless disturbed as it has been before. In the absence of a provision on the date of coming into effect, it may be assumed that the constitution became legally effective upon promulgation.

The document contains thirteen chapters and one hundred and forty-one articles. The chapters deal with the form of government, sovereignty, territory, citizenship and private rights, national powers (including provincial powers) parliament, the president, the cabinet, the courts, legislation, finance, local government, and amendment and interpretation. Projected chapters on education and economic life are not found in the final instrument. Without them, it is not overloaded with legislative matters, but conforms to the conventions of modern western constitutions.

The republic is maintained, with sovereignty in the people, who are possessed of the usual rights, all qualified by law. The structure of the political organization is federal, the parliament is bicameral, and the cabinet is responsible to the lower house. The president is elected by

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parliament in joint session. He holds office for five years and may be reëlected. The same provisions apply to the vice-president, who has no functions save to act during the disability of the president and to fill out an unexpired presidential term. It is specifically provided that the ministers in charge of the various departments shall form a cabinet. Parliament may pass laws over the president's veto, apparently by ordinary majority. An executive budget is authorized over which the house of representatives is given control, the senate's objections and proposals for modification being merely advisory. Several sections deal with a board of audit, equipped with a president chosen by the senate, continuing functions, and special constitutional and legal safeguards. A brief chapter on the judiciary provides for senatorial confirmation of appointment of the chief justice, and for a number of safeguards of judicial independence.

The application of the federal system is the most significant undertaking in the new constitution. The drafting committee had to take into account several considerations. One of these was the actual situation prevailing, in which the central government was quite unable to make its mandates effective outside the areas under the military control of its supporters. Corollary to this was the movement for provincial autonomy revealed in the drafting of a number of provincial constitutions by assemblies of the provinces. On the other hand, there was the strong objection of the Chihli military clique, in control of the central government for the past eighteen months, which fears that federalism will thwart its plans for unification; also, the rather widespread presentiment that the separatism already rampant in many provinces will be intensified under a federal system. Consequently, the division of powers favors the central government greatly, and several articles indicate definitely national powers limiting the provinces. Both national and provincial powers are enumerated, concurrent powers are indicated, and provincial administration of national law is authorized.

Those powers assigned to the national government are: international relations; national defence; nationality; criminal, civil and commercial law; the prison system; weights and measures; currency and national banking; customs duties and all taxes requiring uniformity; posts; telegraph and aviation; national railways and roads; national properties; national debts; monopolies and special licences; the national civil and military services. Concurrent powers deal with agriculture, industry, mining, forestry, education, banking, stock exchanges, navigation,

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marine fisheries, inter-provincial conservancy works and waterways, municipalities, eminent domain, national census, and statistics, colonization and reclamation, police, public sanitation, pensions and unemployment, preservation of ancient books, articles or places. Provincial powers cover, as intra-provincial matters, education, industry and communications, property, municipalities, conservancy and public works, taxation, debts, banking, police and public safety, social and public welfare work and local self-government.

Reserved powers there are none; for by article 26; "Any matter not provided for in Articles 23, 24 and 25, the nature of which is national, shall be dealt with by the national government. Matters by nature provincial shall be dealt with by the provincial government. Cases of disputed jurisdiction shall be adjudicated by the supreme court of justice." The inference is readily drawn that each authority is intended to have its own jurisdiction and to stay within it. However, certain other articles appear to give national law precedence over provincial without qualification: article 28 provides that: "Provincial laws shall be invalid when they are in conflict with the national law;" by article 125 laws for provincial self-government "must not be in conflict with the constitution or with any national law." Clearly the interpretation of this point is likely to adopt the American principle, while the terms of the constitution will serve to quiet the suspicions of the militarists.

Numerous other provisions guarantee the national supremacy. The interpretation and amendment of the constitution rest with the national assembly sitting as a constitutional convention. There is an apparent conflict between this article and another which authorizes the supreme court to decide conflicts between national and provincial law; though the conflict is removed by reading "statutes" instead of "law" in the latter article, the difficulty of application remains. The national government may restrict the province in the exercise of its taxing powers; disputes between provinces are to be settled by the senate; there are to be no provincial military forces and no provincial courts. A recalcitrant province may be coerced into obedience to the national authority.

The provinces may pass laws for their own organization and the execution of the powers assigned to them. It is interesting to note that the term "constitution," as applied to the province, is carefully avoided as though it had some superior sanction beyond that of "law for provincial self-government." A system of provincial and local government is outlined, providing for a collegiate executive of from five to

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nine persons, ultimately to be elected directly by the people for the province; a provincial assembly of one house, elected directly; district magistrates and assemblies, also elected. The districts are to possess certain powers of self-government.

The provisions dealing with the relations between the executive and the legislature deserve special consideration. In spite of the ill success that has attended the attempt to apply the provisional constitution, the new document elaborates a still more complete parliamentary system which would, if carried out, make of the president a mere figurehead. He is elected by the parliament, is "jointly responsible" with the cabinet to the house of representatives, is subject to impeachment, and his ordinances require the countersignature of ministers. He may adjourn parliament twice during a session for a limited period; he may dissolve the house of representatives only with the consent of the senate. His nomination of a premier is subject to approval by the house. Either house may offer suggestions to the government, interpellate ministers, or demand an investigation of administrative action. Only the house of representatives may vote lack of confidence or impeachment. In case a vote of no confidence is passed, the president is required either to dismiss the ministers or to dissolve the house of representatives. Evidently the way is opened to deadlocks, even if the law is observed; while for a strong president, hampered in times particularly requiring effective executive action by a parliament which is filled with cliques and takes particular delight in badgering the administration, the temptation to disregard the constitution is likely to be irresistible.

Although the articles which seek to accomplish the purpose have been referred to in passing, it may be pointed out that an attempt is being made to meet some of the objections to a bicameral legislature, particularly those which have been directed against the interference of an upper house with cabinet government. The senate is elected by the provincial assemblies and other electoral bodies, to be representative of the major interests of the provinces; the house is chosen by direct popular vote. A senate sits for six years and is not subject to dissolution; a house may sit for three years if not dissolved. The house may bring charges and impeach; the senate decides the case. Although by article 58 "the concurrence of both houses" is required to constitute an enactment of parliament, this general equality of legislative power is qualified by article 112: "Should the senate amend or reject the budget passed by the house of representatives, it may request the concurrence of the house of representatives in such amendment or

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rejection. Should it fail to secure concurrence the bill as originally passed constitutes the budget." The cabinet is responsible only to the house, which may express want of confidence and approve or reject the president's nominations for the premiership. The senate confirms the appointment of the chief-justice of the supreme court, selects the chief auditor, and settles controversies between provinces. By these various provisions the senate is contemplated as a quasi-judicial body and to a large extent relieved of political responsibilities. Whether it will accept such a status in practice is a highly doubtful question.

As an instrument of government, the new constitution is far superior to the provisional constitution. As a system for the government of China, it savors too much of the West, which is not strange when one recognizes that it is largely intended to dress up the show-window for a commission on the abolition of extraterritoriality. Japan was successful by the same method and continues to this date to hold up her "constitution" as proof of her liberal ideas, although her more cynical statesmen, trusting to the title only, secured themselves against later charges of illegality by the actual terms of the instrument. China's draftsmen have preferred to set up an ideal to work toward, anticipating, no doubt, that for many years the new constitution can be only an ideal, but also that the ideal will be strengthened with time, in spite of the abuse it will have to endure. Without overlooking the responsibility of the West for the fact of Oriental imitation of institutions that do not fit, and possibly never will fit, Oriental conditions, one can but look forward to the time when constitutions with a character of their own will come out of the East.

HAROLD SCOTT QUIGLEY.

University of Minnesota.

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NOTES ON INTERNATIONAL AFFAIRS

Operation of the League of Nations. Probably the first question that arises in connection with the League of Nations in the United States is its relation to the treaty of Versailles. As is well known, the Covenant is Part I of the treaties of peace with Germany, Austria, Hungary and Bulgaria. It is therefore assumed that the Covenant is an indivisible portion of the arrangements which recasted political Europe. The assumption recalls the story of the bishop who had a negro man of all work. In conversation it developed that they celebrated the same birthday.

"Why, bishop," said the man of all work, "me and you is twins."

Birth on the same day or in the same house does not make twins.

The League of Nations and the "peace" are not twin, but separate, phenomena. Declaration of war determined the parties to the treaties of peace. In 1919 that in itself was assumed to be a proper credential of decency for admission to the league; but neutrals were likewise admitted to accede to the Covenant, which upon its entrance into force consequently launched out with a membership into a life altogether different from that of the treaties in which it was originally incorporated. This was not novel. To cite a single instance, the constitution of the Germanic Confederation, the rules of diplomatic rank, the régime of international rivers, the European abolition of the slave trade were part of the treaty of Vienna of June 9, 1815.

The Covenant is an international convention signed and ratified by the original members, acceded to by members who were neutral in the World War, and ratified in advance by members admitted by vote under Article I. The convention establishes certain standards, known as covenants, and the acceptance of these by a state through its own sovereign action is essential to the working of the system. Cognizance of this fact is essential to the appraisal of the organization.

The League has now gone on for about four years, from January 10, 1920. In its three organs, the Assembly, Council and Secretariat, there is now quite a body of precedent, and the bulk of business at present proceeds along clearly defined channels. Both the Assembly and Council work under published rules of procedure; the Secretariat

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works under rulings and instructions of the representative organs and under the decisions of the Secretary General, advised by the under secretaries and heads of sections. All this procedure, while consistent with the Covenant, is nevertheless additional to it. The actual League differs in important practical respects from the League that was pictured as a result of more or less intelligent study of the Covenant.

It is fashionable to talk of the League of Nations as a definite political entity. Such talk is erroneous. The only organ of it which is continuously at work is the Secretariat, but this is a body of persons without any right of initiative except that of writing certain letters. If a member state makes a request to the Secretary General respecting a dispute or circumstance endangering peace, the Secretary General has the duty of summoning a meeting of the Council to consider the complaint, whether other members like it or not. But otherwise the Secretariat corresponds in functions to the Washington officials, with the President, his Cabinet and Congress away, a purely administrative and secretarial body.

This is not to say that the Secretariat is not useful and even remarkably so. It is scarcely a secret that Sir Arthur Salter's is the real genius behind the reconstruction of Austria, but the ideas were just visions until the Council adopted them and the interested states put them in effect as formal protocols.

In the day's work the Secretariat serves usually as a mere clearing house of international business and a machine for facilitating the action of states. A recent budget of documents forwarded to member states for their information and action will indicate this primary feature of its work. I refer to the weekly mail which reached capitals of about this latitude about December 1, which contained:

Budget for 1924 as adopted;
Report on Russian refugees in Constantinople;
Transmittal of draft treaty of mutual assistance;
Greek refugees settlement—Declaration of Great Britain, France, Italy;
Greek refugees settlement scheme protocol;
Report on Assembly vote on Article X;
Financial administration regulations;
Allocation of expenses;
Communications and transit, minutes of fifth session;
Assembly rules of procedure;
Notice circulated under Statute of Court;

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Opium Conferences, date;
Armenian identity certificates;
Protection of scientific property;
Transmittal of obscene publications convention;
Transmittal of protocol on commercial arbitration clauses;
Calendar reform;
International motor licenses.

The same budget announced that the mandates for Syria and Palestine had entered into force and officially notified states of five ratifications or adhesions to international conventions.

The Secretariat consists of "a Secretary General and such secretaries and staff as may be required," a total of about 300 men and women of some 30 nationalities. The secretaries and staff are under secretaries general, heads of sections, the necessary internal services such as library, registry, physical management, with the requisite personnel.

The Secretary General is appointed by the Council with the approval of an Assembly majority, but the rest of the Secretariat "shall be appointed by the Secretary General with the approval of the Council." The Council recognizes the Secretary General's right to choose his staff and its approvals to date have been purely formal. Once appointed, the Secretariat performs, in an autonomous capacity, specified duties under the Covenant and under instructions of the Assembly and Council.

The present Secretary General has organized what is undoubtedly the most efficient group of persons engaged in official functions anywhere in the world. The keynote of the Secretariat is initiative. Every individual in it has clearly defined duties, fulfilled with a minimum of bureaucratic pyramiding of responsibility. They are all experts occupied with their specialties, in touch in many fields with the experts of the governments. Responsibility and pride in work are fostered. One person with a staff is responsible for registration and publication of treaties; one for mandates in so far as they are handled by the Secretariat, and so forth. Despite diversity of work, the whole Secretariat is well articulated. The Secretariat is the organ in contact with the public. It publishes documents and it is chiefly due to it that every document that has been given a final form may be procured at cost throughout the world. As an informational service, this is of prime importance in the study of affairs and development.

Assimilated to the Secretariat but with specific functions are commissions and committees of differing types.

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The permanent military, naval and air commission, stipulated by Article 9 of the Covenant, is governmental, the Council naming the member states which appoint its personnel. Committees of this type are chosen to insure governmental acceptance of the forthcoming decisions or recommendations.

The permanent mandates commission stipulated by Article 22 of the Covenant is specially chosen to be independent of all governmental influence.

The third type is fairly numerous: the temporary mixed committee on armaments, the economic and financial commission, the advisory opium commission, the supervisory commission for finances, the health committee, the epidemic commission, the communications and transit committee, and others. These are invariably expert bodies with a personnel chosen solely with a view to qualifications for the problem in hand. Several of them have been created as a result of Assembly resolutions; but, as the Assembly is not a continuing body, the resolutions simply call upon the Council to execute the idea, so that all the committees are appointed by the Council.

All three types are advisory; their reports have no standing until approved by the Council.

Something larger is provided for in activities which prove susceptible of more constructive treatment. The economic and financial organization, the health organization, and the communications and transit organization in their diverse fields are producing international law as a definite policy.[1] The organizations consist of the appropriate section of the Secretariat serving in its normal capacity, the expert committee and a series of international conferences. The Secretariat section is a recording and data-collecting organ, the expert committee an exploring body. These two working together identify international questions ripe for international action. This fact is reported to the Assembly or Council, or both, and the Council invites the member states to examine those questions in an international conference. Such conferences differ in no respect from those familiar to all students. The delegates are governmental, the product is conventions subject to ratification. The Geneva personnel supplies the secretarial assistance and the original of the convention is deposited with the Secretariat, which also handles ratifications, adhesions, accessions and other technical details of entrance into force.

[1] The narcotic and white slave traffics are similarly handled.

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It should be mentioned incidentally that conference action also takes place under the Assembly. A committee of the First Assembly was in reality an international conference for the elaboration of the statute of the Permanent Court of International Justice, and delegates to that Assembly were invested with full powers *ad hoc* for the signing of the protocol covering it. A committee of the Fourth Assembly, to give a second instance, elaborated the draft treaty of mutual assistance which is now before all governments for consideration with a view to definite action at the time of the Fifth Assembly.

We have here for the first time machinery for securing voluntary action upon any subject which free states desire to consider and to regulate in common. In four years it has produced, or had charge of, fifty international conventions or protocols to which 565 ratifications have been made.

The initiating organs of the League are the Assembly and the Council. By the Covenant the member states agree to come together in these organs from time to time and at least once each year. The Assembly normally convenes annually on the first Monday in September, and the normal Council periodicity is now quarterly,—March, June, September and December. Meetings of the Assembly and Council synchronize in September. Each of them conducts its business under published rules of procedure. By a resolution adopted by the First Assembly, "representatives sitting on the Council and the Assembly render their decisions as the representatives of their respective states, and in rendering such decisions they have no standing except as such representatives." This resolution serves to call attention to a fact usually disregarded, that it is states that are members of the League of Nations. Only he who is willing to insult those states individually can afford to flout them when they meet together in a grouping elected by their own free will.

The Assembly consists of representatives of the members of the League, acting in virtue of credentials. It is, therefore, an annual international conference, meeting in accordance with a formal convention and having a very elastic agenda. It "may discuss and examine any matter which is within the competence of the League." It has three duties now exclusive to it, the passing of the budget, the admission of new members, and the election of nonpermanent members of the Council. It must approve additional members of the Council and the Council's nomination of a Secretary-General. It must hear a dispute referred to it by the Council. Various matters, such as

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those enumerated in Articles 23 and 24, are intrusted to the League without specifying either the Assembly or Council, which are therefore equally competent. Whatever doubt might once have existed, the Assembly is the highest authority in the League system. An annual report on the work of the Council and Secretariat is made to it, and the discussion of the matters reported upon constitutes a very useful appraisal of international progress.

Amateur political scientists have said a good deal about a "democratic" league, by which they mean that the "people" should designate the persons to attend the Assembly. It should be obvious that the only possible international representation of a people is by the government that they accept. If a nation cannot contrive its constitutional machinery so as to make its government representative it is not only useless, but silly, to try and redress the national balance by a referendum for international purposes. As a matter of fact, the actual delegates to the Assembly are very representative. States like Norway have established the practice of sending representatives of the political groups, while no one can intelligently look into the personalities representing states like Great Britain or France without finding in them the reflection of their governments. We should not in this connection overlook a fact of human nature; that we are all slightly better in company than alone. Particularistic, self-centered states will tone down in conference.

The League Assembly normally passes resolutions and recommendations, that is, expresses opinions of no binding force. The value of such pronouncements is not to be deprecated in political science. They set a standard of morality, mark the starting point of future thought and action, and afford a definite formula for international consideration. If you study the product of the Assembly of the League, you will find it all of the character indicated, except the decisions relating to League matters, such as passing the budget. When the Assembly works out a convention, the delegates sign it only after they have been invested with full powers for that specific purpose.

It is customary to refer to the Assembly as a debating society. It is, and as a forum of world opinion it fills one of its most interesting rôles. Political scientists generally admit that in the long run public opinion is determinative. There was no medium for focusing public opinion before the Assembly existed. The force of mere opinion is not appreciated because its effect is negative. Because of it things do not happen or they take a different turn. Even though, in a given

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case, it may not result in action, the fact of its expression discourages a repetition of the incident. Italy's experience with the Assembly last September has made such action very unpopular.

The Council is an organ of the whole membership of the League, partly by a representative system. Of the ten states comprising it, four always sit, being states of "general interests," which in both theory and practice have relations so wide that all questions arising concern them. The other six are chosen annually by the Assembly, it being the practice to make the service three years for each. These six are representative and the practice is to select them somewhat on the basis of personality. Greece was on while Venizelos was in power, Sweden's membership indicates that Branting represents a widely-held point of view, China was dropped after Wellington Koo returned to Peking, and Czechoslovakia was added because Benès is a statesman advised far beyond his own borders. Action by the Council has been influenced less than one would expect by the national considerations of member states. On the other hand, the requirement of unanimity has in several instances resulted in concessions in behalf of agreement.

The Council may be regarded as the executive conference of the League. Representatives attend it by virtue of full powers, and the agenda largely consists of giving effect in decisions to proposals emanating from the Assembly, the Secretariat and the committees. It issues invitations to all conferences, appoints committees and has a number of specific duties laid down in the covenant. It is the normal forum for hearing disputes. In this connection it is worthy of note that the procedure is always constitutional. Disputes have been referred to the Council under Articles 11 and 15. The former has been exercised by the member states under the friendly right clause, and Article 15 lays down the procedure of conciliation. The results must, therefore, be judged by the limitations of that procedure. To consider the Greco-Italian dispute as a possible reason for employing economic sanctions is entirely erroneous, because Greece explicitly excluded Article 16 in her appeal. Disputes are frequently based on disagreement on legal points. In connection with them the Council has requested eight advisory opinions from the Permanent Court of International Justice, has organized two legal commissions and has consulted legal advisers constantly.

The Council has met in 27 sessions, the first beginning January 16, 1920. That session had three items on the agenda. The agenda now has around 75 items. Altogether it has handled more than one thou-

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sand items of business. A session now lasts more than a week and since the decision to meet quarterly was taken last September the prospect is that the sessions will be longer.

The foregoing attempts to set forth the League of Nations as it exists. Details are necessarily avoided, but what has been written is based upon constant use of as complete a set of documents as exists outside of Geneva. The League is a useful addition to the machinery of political science, responding to the need of states to reach common decisions. The daily routine in the aggregate is more important for the good of the world than the occasional dispute which attracts more attention, but which in reality is only the bursting of a boil that may never recur. The processes of the League are giving things international a certainty and definiteness impossible before. As a medium of coöperation it provides the opportunity to attain agreement on all the frictional details of international relations—before, rather than after, they have become sore boils. If, by the multiplicity of conventions, resolutions, technical committees, reports and studies that the League constantly produces, it results, as I think it will, that session after session of the Council convenes with no dispute before it, that may be regarded as real success. It is sounder political science to pay the doctor for keeping the patient well than to hire him only to get the sufferer well.

DENYS P. MYERS.

World Peace Foundation.

Influence of the League of Nations on the Development of International Law. The treaty under which the League of Nations was established declares the object of the League to be "to promote international coöperation and to achieve international peace and security." The specific measures included in the treaty for the furtherance of these two purposes, as well as the political organization of the League itself, are what we have in mind when discussing the influence of the League of Nations on the development of international law. At the outset we may observe that any international agreement of a law-making nature, such as the Covenant of the League of Nations, would govern the future conduct of the contracting states with respect to the subjects included in the agreement, and when ratified by a majority of the states of the world would tend to become universal law.

It was frequently said during the World War that as Grotius, impelled by the horrors of the Thirty Years' War, enunciated principles

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which became the foundation of the modern system of international law, so the World War, which registered a return to the appalling practices of the seventeenth century, might be the impulse for a new departure in the development of international law.

Certain it is that the World War created a universal desire for a system of law which would secure the world against such another catastrophe. The war focused attention on law; the warring nations, impelled by the force of public opinion, made desperate attempts to justify their actions on the basis of the observance of law. This was most hopeful, for although it showed the inadequacy of the existing international law to preserve peace and the lack of rules adapted to deal with the new conditions, it emphasized the general acceptance of the principle of the legal responsibility of states to observe rules of international law, and in consequence created a public opinion against the doctrine of military necessity, which during the war seemed to be undermining the whole process of international law. In no field did the World War upset the equilibrium more than in this domain, and the world is still unsettled as to what the law really is. What of the old exists, and what additions or amendments are needed to make the system of international law consistent with the requirements of international justice as conceived to be necessary in the changed conditions of international life,—are questions asked by Mr. Root in 1921.

We must analyze the situation principle by principle and rule by rule if we would build on this imperfect and uncertain structure. The establishment of the League of Nations has made the situation very complex. Nevertheless, the widespread determination to make international law a major factor in the unification and stabilization of the world is most encouraging, for all law whether customary or conventional grows by common consent, and the first step toward such consent is belief in the efficacy of law. The popular slogan, "Law not war," is evidence of this belief, as also the present clamor for the codification of international law, coupled with the plan for the outlawry of war. It is generally agreed that the advancement of states and of peoples depends on the principles and rules of law that are in the future to govern the relationships of states, and the world seems to be centering on a development of international law which shall directly aid in achieving the two objects of the League of Nations,—the maintenance of international peace and the promotion of international coöperation. The League has focused thought in this direction.

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As evidence of this tendency, we may cite the world-wide desire for the reduction of armaments which impelled the calling of the Washington Conference on the Limitation of Armament, as well as the coming Naval Conference which has for its object the extension of the principles adopted at Washington to all capital-ship-owning powers. We might also mention the Treaty of Mutual Assistance which the temporary mixed commission of the League of Nations presented for discussion at the Fourth Assembly, together with the bill now pending in the United States Senate whose essential object coincides with the declaration in Article 1 of the Treaty of Mutual Assistance that aggressive war is an international crime. Mr. Root said in his address before the American Society of International Law in April, 1923: "I look forward with confidence to the time when the rules so formulated and accepted as universal law will declare all wars of aggression to be criminal violations of the law of nations."

The world is therefore concerned with the making of law for the maintenance of peace and the prevention of war. As to the promotion of international coöperation, which we must observe is a method of maintaining peace, we have but to enumerate the various conferences convened by the League of Nations dealing with subjects mentioned in Article 23 of the Covenant, and in which the United States has had "official observers." The conferences on Custom Formalities, Transit Reforms, Health, Opium Traffic, the White Slave Traffic, and International Labor bespeak a desire for the formulation of definite laws on these and other subjects of international concern. Thus, the League of Nations has begun the actual testing out of one of the four means, stipulated in the Covenant, of achieving its ends,—namely: "the firm establishment of the understandings of International Law as the actual rule of conduct among governments."

As to the technical significance of the term "understandings," on which certain observations have been made, I am willing to accept the interpretation which obviously the members of the League accept in signing the Statute of the Permanent Court of International Justice. The scope of the "understandings" mentioned in the Covenant is indicated by the law, expressed in the statute, which is to be applied by the court.

The difficulty in the selection of judges which prevented the establishment of the Court of Arbitral Justice in 1907 was surmounted in 1920 by using the Council and the Assembly as electoral bodies. If we would understand, however, the real process of solving this "simple

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but very stubborn" difficulty, as Mr. Root says, we must appreciate the difference between the relationships of states before and after the organization of the League of Nations. In 1907, the community of nations as represented at the Second Hague Conference, consisted of a small group of powerful states and a large group of small and weak states, neither of which was willing to submit to the control of the other. As members of the League of Nations, however, their interests are protected through the Council and the Assembly. The 1907 fear of encroachment on sovereign rights diminished when the members took their places in these two bodies. Moreover, the organized community of nations, as represented by the League in 1920, had inspired a confidence sufficient to overcome the obstacles which had prevented the setting up of a permanent court for the adjudication of differences arising within the community of nations.

The Covenant of the League, Article 13, providing that the members of the League will submit to arbitration those disputes which they consider suitable for submission to arbitration, and the definite statement as to what these disputes are, register a signal advance in the amicable settlement of international disputes. We find here provision for obligatory arbitration of specified disputes. In estimating the value of the Permanent Court of International Justice, Hyde says: "Its broad and yet reasonable scheme for the obligatory adjudication of specified classes of disputes, without reservations serving to impair the value of the general undertaking, was of vast significance."

This is in marked contrast to the declarations of the last world convention on arbitration in 1907, which declared that "In questions of a legal nature, and especially in the interpretation or application of international conventions, arbitration is recognized by the contracting Powers as the most effective, and, at the same time, the most equitable means of settling disputes which diplomacy has failed to settle," and that "Consequently, it would be desirable that, in disputes about the above-mentioned questions, the contracting Powers should, if the case arose, have recourse to arbitration, in so far as circumstances permit." This is a negative adherence to the principle of arbitration.

The disputes mentioned in Article 13 of the Covenant, which the members of the League are to submit to arbitration, are the following: disputes as to the interpretation of a treaty, as to the existence of a fact which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to

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be made for any such breach. This and the fourth clause of the preamble to the Covenant, which cites "a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another," as one of the means of achieving the objects of the League, go far beyond the limits of any previous international convention in recognizing the obligation to keep international engagements. Disputes of this character involve the whole matter of the binding force of treaties. The last important international convention concerning the right of a state to liberate itself from the obligations of a treaty, signed in London in 1871 by the signatory powers of the Treaty of Paris, declared that it is an essential principle of the law of nations that no power can liberate itself from the engagements of a treaty nor modify its terms except with the consent of the contracting parties. Oppenheim observes with regard to this convention that "the standard value of the declaration of the Conference of London of 1871 . . . must remain doubtful until an independent international court is created with jurisdiction to set aside a treaty obligation which has become too oppressive." We have today such a court and also an agreement to refer to the court any dispute concerning a breach of an international engagement.

The provisions of Articles 18, 19, 20 and 21 of the Covenant deal with this problem. The stipulation in Article 18 that treaties must be registered before they are binding will facilitate the action of the court. The stipulation in Article 19, that the Assembly may advise the reconsideration by members of the League of treaties which have become inapplicable, secures the application of the principle *rebus sic stantibus* to cases where its application is really justified. Article 19 also stipulates that the Assembly may from time to time advise the consideration by the members of the League of international conditions whose continuance might endanger the peace of the world. This is a wise provision, especially in view of the greatly changed conditions involved in the establishment of the League itself, and also in view of the political rearrangements affected by the treaties of peace. The problems connected with the binding force of treaties and the situations arising from the application of the principle *rebus sic stantibus* can therefore for the first time be referred to a court of justice.

The stipulation in Article 13 that the members of the League will carry out in full good faith any award that may be rendered parallels pretty nearly the provision in Article 37 of the 1907 Convention for the Pacific Settlement of International Disputes, except that in Article

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13 a sanction is provided in the event of any failure to carry out an award. In the words of the Article, "the Council shall propose what steps should be taken to give effect thereto." It should be noted, however, that each of the seventeen awards of the Permanent Court of Arbitration has been carried out in full good faith, and this, we might emphasize, includes the recent Norwegian-American case.

Amendments to Articles 12, 13, 15 and 16 of the Covenant, adopted by the Second Assembly, but not yet ratified by the members of the League, make a distinction between arbitration and judicial procedure. One amended paragraph reads: "The Members of the League agree that, whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration or judicial settlement, and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration or judicial settlement." This infers a differentiation in the method of decision employed by the Permanent Court of Arbitration or special arbitration tribunals, on the one hand, and the Permanent Court of International Justice on the other. This is a wise distinction, for although the majority of the Hague awards have been made in accord with justice, the arbitrators have always had in view the pacific settlement of the dispute; they have been guided by the Convention for the Pacific Settlement of International Disputes which declares the object of international arbitration to be the settlement of disputes between states by judges of their own choice and on the basis of respect for law. The competence of a court of arbitration is determined by the agreement or *compromis* providing for the arbitration. States submitting a dispute to such a court may confer upon the court any power which they deem expedient.

The competence of the Permanent Court of International Justice, on the other hand, is determined by the statute of the court, which stipulates the law which the court shall apply. This law consists of "1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting States; 2. International custom, as evidence of a general practice accepted as law; 3. The general principles of law recognized by civilized nations; 4. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law." The application of this law involves the judicial rather than the arbitral process A clear distinction between these two processes of settling international

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disputes is made by Professor George Grafton Wilson. He points out the inconsistency in coupling the terms "arbitral" and "justice," because, he says, "decisions which might be called judicial would usually be based upon a different course of reasoning from that which might be followed in arbitral cases. Arbitrators may properly consider questions of temporary policy and expediency and are frequently expected to give weight to such considerations. The judge, on the other hand, is supposed to be in the main free from such influences."

The amendments to the Covenant which distinguish arbitration from judicial procedure constitute a step in advance in the settlement of international disputes. They are in keeping with the judicial continuity of the Permanent Court of International Justice expressed in its fixed personnel, which, according to the statute, represents, without regard to nationality, the main forms of civilization and the principal legal systems of the world.

In deciding cases, the court has held strictly to the application of legal principles. With regard to advisory opinions, which by Article 14 of the Covenant the court may give upon request of the Council or the Assembly, the court has sustained the view of Mr. Moore that the giving of these opinions is "obviously not a judicial function." In the court's reply for an advisory opinion concerning the status of Eastern Carelia, for example, the statement is made that "the Court, being a Court of Justice, cannot, even in giving advisory opinions, depart from the essential rules guiding their activity as a Court."

One direct effect of the Permanent Court of International Justice on the development of international law will be the inevitable growth of a body of law which, although its statute rejects the doctrine of *stare decisis*, will certainly contribute toward making the international law of the future.

Many chapters could be written concerning other activities of the League which have a bearing on the development of international law. Article 22 of the Covenant, which established the mandatory system, involving the principle of trusteeship over certain undeveloped peoples, introduces new and complicated considerations affecting international law. The provisions of Article 23, calling for international coöperation regarding matters of common interest, the stated meetings of the Assembly and the Council acting in their capacity as diplomatic conferences, assisted by the Secretariat, which is adequately equipped to carry into effect conclusions agreed upon by these conferences, as well as the facility which this permanent machinery

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offers for calling special international conferences to deal with matters of international concern, presage the growth of a new body of conventional law, governing a large range of international activity. Moreover, the habit of peaceful agreement, which the League develops, lays the firmest foundation for the development of international law.

Other agreements, such as the stipulations enunciated for the avoidance of war in Articles 4, 12, 13, 15 and 16 of the Covenant, introduce principles, in some instances, wholly new in international procedure. Article 16, for example, which stipulates joint economic pressure and, if necessary, joint military measures by the members of the League against a member who goes to war in disregard of the provisions of Articles 12, 13, or 15, as well as interdiction of intercourse between the guilty state and nonmembers, disrupts the established laws of neutrality, adds to the confusion over the status of contraband, and nullifies to a greater degree than did the World War the definition of blockade enunciated by the Declaration of Paris in 1856.

Certainly great changes in the principles and rules of international law are involved, and the situation is complicated. The tension would be far less strained, however, if all the members of the family of nations, or if indeed all the most powerful members, were included in the League of Nations. How far, we may ask, are the changes, thus made by the League, obligatory on outside states? We know, of course, that on general principle changes in the law of nations require the consent of the states affected. In contradistinction to this, however, we may quote Justice Story, who in the case of La Jeune Eugénie declared: "It is not to be admitted that no principle belongs to the law of nations which is not universally recognized as such by all civilized communities." On this subject, Hyde says: "It is not conceivable . . . that the United States would admit the right of the principal European powers to deprive it against its will of privileges long acknowledged to be the possession of each independent State," but he observes: "It is not suggested that the opposition of a strong and solitary State could ultimately prevail against the consensus of opinion of the entire civilized world, or that such a State would not be finally compelled to acquiesce in changes which it once opposed." How, then, shall we determine the obligation of a nonassenting state to changes in the law of nations? What is the criterion? Mr. Root's expression, "universal international right," seems to me to express that criterion. To quote again from Justice Story, and from the same case, he declares: "I think it may be unequivocally affirmed, that every doctrine, that

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may be fairly deduced by correct reasoning from the rights and duties of nations, and the nature of moral obligations, may theoretically be said to exist in the law of nations."

The situation demands a new statement of the principles and rules of law that are hereafter to govern the conduct of states, and we may hope, with Mr. Root, that after the United States adheres to the protocol of the Permanent Court of International Justice, its influence will be employed to bring about the conference; recommended by the advisory committee of jurists who drafted the plan for the Permanent Court of International Justice, "to formulate and agree upon the amendments and additions which should now be made, to reconcile divergent views and to extend the law to subjects not now adequately regulated, but as to which the interests of international justice require that rules of law shall be declared and accepted." Such an effort consciously based on the interests of international justice would produce results which will make possible the "maintenance of justice" which by the preamble to the Covenant is declared to be one of the means of achieving the objects of the League of Nations. This would constitute the new departure in international law, which, it was hoped, the World War might inspire.

FANNIE FERN ANDREWS.

The Progressive Character of War. There is a popular fallacy to the effect that with the passing of time and the adoption of international conventions war has become more and more humane. The world is getting better and better, we hear it said. World peace projects, leagues to abolish war, and the like, spread their doctrines through the public press and the Christian pulpits. Yet it is actually true that warfare has become more and more vicious and vigorous as time goes on. It has extended its effects more and more, and its methods. It disturbs the life of the world when it used to disturb the life of but a few persons. Such was not the case in other days. "The warfare of the century preceding the French Revolution," says Mr. Belloc, and the pertinency of his remarks lies not in the authority of his name so much as in the verity of his facts, "attempted limited things in a limited manner; it did not attempt any fundamental change in society; it was not overtly—since the Thirty Years War at least—a struggle of ideas; it was conducted on behalf of known and limited interests for known and limited objects; and the instruments with which it was conducted were instruments artificial and segregated from the general

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life of nations . . . what have been called the 'professional' armies."[1] In 1785, it was even possible for the American people to conclude a treaty with Prussia which provided:

"All women and children, scholars of every faculty, cultivators of the earth, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages or places, and in general all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, and shall not be molested in their persons, nor shall their houses or goods be burnt or otherwise destroyed, nor their fields wasted by the armed force of the enemy, into whose power by the events of war they may happen to fall; but if anything is necessary to be taken from them for the use of such armed force, the same shall be paid for at a reasonable price. And all merchant and trading vessels employed in exchanging the products of different places, and thereby rendering the necessaries, conveniences, and comforts of human life more easy to be obtained, and more general, shall be allowed to pass free and unmolested."[2]

In conformity with these ideas we have the theory handed down from the days of mercenary troops and professional standing armies, the theory that war should affect only armed men. Yet in spite of its age it is only a theory. It began in the mind of an idealistic philosopher. It becomes useful propaganda. And thus it has proceeded through history.

In 1758, Vattel remarked:

"Aujourd'hui, la guerre se fait par les troupes reglées; le peuple, les paysans, les bourgeois, ne s'en mêlent point, et, pour l'ordinaire, ils n'ont rien à craindre du fer de l'ennemi."[3]

In 1762, Rousseau declared:

"La Guerre n'est point une rélation d'homme à homme, mais une rélation d'État à État, dans laquelle les particuliers ne sont ennemies qu' accidentellement, non point comme hommes, ni même comme citoyens mais comme soldats."[4]

In 1792, when the principles of the French Revolution had tended to emphasize the rights of individuals as against those of the state, when the doctrines of Rousseau had influenced the opinions and ideas

[1] H. Belloc, *The French Revolution*, p. 153.
[2] Moore's *Digest of International Law*, vol. vii., p. 461.
[3] Vattel, *Droit des Gens*, bk. iii., ch. viii., sec. 147.
[4] Rousseau, *Contrat Social*, bk. i., ch. iv.

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of the Jacobins who embarked on the career of foreign war, France declared war against Austria, "not a war of nation against nation, but the just defence of a free people against the unjust aggression of a king."[5]

In 1793, the French Republic announced itself "at war with the King of England and the Stadtholder of the United Province."[6]

In 1798 Napoleon issued at Alexandria a very adroit proclamation, declaring that he made war only against the military governing class of the Mamelukes.[7] General Montesquiou had already, in 1792, said much the same thing to the people of Savoy.[8]

In 1804 Alexander of Russia declared:

"It is not upon France that we make war, but only upon a government as tyrannical towards France as towards the rest of Europe."[9]

In 1812, when General Hull of the American Army proceeded to invade Canada he stated that his army brought neither danger nor difficulty to the peaceable and unoffending inhabitants whom he came to "protect" not to "injure."[10]

In 1847, General Scott proclaimed at Vera Cruz to the Mexicans:

"Americans are not your enemies, but the enemies, for a time, of the men who, a year ago, misgoverned you, and brought about this unnatural war between two great republics. We are friends of the peaceful inhabitants of the country we occupy."[11]

In 1863, General Robert E. Lee announced from the headquarters of the Army of Northern Virginia: "We make war only on armed men."[12]

In 1865, Uruguay, Brazil and Argentine concluded a treaty of alliance to make "war not against the people of Paraguay but against the government"[13] and then proceeded to the practical annihilation of Paraguay.

In 1868, the Declaration of St. Petersburg determined that "the only legitimate object which States should set before themselves during war is to weaken the military forces of the enemy."[14]

[5] Duvergier, *Collection complète des lois*, vol. v., p. 118.
[6] *Ibid.*, vol. v., p. 135.
[7] Cambridge Modern History, vol. viii., p. 599.
[8] Archives Parlementaires, ser. 1, vol. 52, p. 295.
[9] Cresson, *The Holy Alliance*, p. 13.
[10] Champlain Society Publications, No. XIII., pp. 355–356.
[11] Smith, H. A., *Military Government*, p. 105.
[12] G. O. 73, Army of Northern Virginia, June 27, 1863.
[13] British and Foreign State Papers, vol. 55, p. 83, art. 7.
[14] Rules of Land Warfare, U. S. Army, 1914, p. 57.

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In 1870, King William of Prussia publically said: "I wage war on the soldiers not on the citizens of France."[15]

In 1895, during the Chino-Japanese War, Marshal Yagamata stated in orders: "The enemy army contains our enemies. As for the others, except those who harm or attempt to harm our army, they ought not to be considered as our enemies." And Marshal Oyama called war "an affair concerned with the relations of State to State, which does not touch the people."[16]

In 1898, President McKinley's instructions to American commanders in the field, which were reiterated in military proclamations, contained the following words:[17] "We come not to make war upon the people of the Philippines." "We come not to make war upon the inhabitants of Cuba."

In 1900, upon entering the territory of the South African Republic, General Buller said: "Her Majesty does not make war upon individuals. . . . The quarrel England has is with the Government, not with the people, of Transvaal."[18]

Finally, we have the well-known pronouncement of President Wilson: "We have no quarrel with the German people" contained in his message to Congress of April 2, 1917, asking for a declaration of war, a sentiment reflected in his letter to the Pope of August 27, 1917, wherein he said that our enemies were "not the German people" but "the vast military establishment controlled by an irresponsible government,"[19] and probably also reflected by the formal congressional resolution announcing war between "the United States" and "the Imperial German Government."[20]

This is the record. How far are these true statements of fact, and how far merely war-time propaganda? It is true that in deciding a case in a court of law, in 1917, the opinion followed the presidential doctrine and declared:

"The president has very carefully distinguished between the German government and the German people, and the sins of that government

[15] Proclamation of August 11, 1870, cited in Birkhimer, *Military Government*, 1st ed., p. 76.

[16] Ariga, *La Guerre Sino-Japanese*, pp. 40, 42.

[17] Senate Doc. No. 173, 63rd Cong., 1st Sess., pp. 473, 476.

[18] Oppenheim, *International Law*, 2nd ed., vol. ii, p. 65.

[19] Wilson, *In our First Year of War*, pp. 18, 84–85.

[20] 40 Stat. 1650–1652.

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ought not to be visited upon the people except so far as the legitimate interests of the United States require."[21]

Yet this was dictum, and not essential to the issue, though in conformity with it. Will courts accept, as the determination of the political department of the government, statements made by superior executive officers in public addresses? Probably not at all, because these are primarily propaganda. They do, we know, accept as binding proclamations to this effect issued by commanders in the field.[22] Will they accept such statements if contained in messages of presidents to Congress, as distinguished from congressional enactments or presidential proclamations formally made, and appearing in the statute books? It is doubtful, not only on account of their somewhat unofficial character, but primarily on account of a conflict with accepted principles of law regarding the relative status of one belligerent and another.

The courts speak in quite an opposite tenor from the phrases of the statesmen. Concerning the right of a country to employ force in war, it has been said:

"Either belligerent may modify or limit its operation as to persons or territory of the other; but in the absence of such modification or restriction, judicial tribunals cannot discriminate in its application."[23] Again: it was stated that British subjects adhering to the British Government during the war of American independence "became *personally* answerable for the conduct of that Government of which they remained a part."[24] Further:

"When one nation is at war with another nation, all the subjects or citizens of the one are deemed in hostility to the subjects or citizens of the other; they are personally at war with each other."[25]

"War makes the citizens or subjects of one belligerent enemies of the government, citizens and subjects of the other. . . . During the war with Spain, Cuba was enemy's country, and all persons residing there pending the war, whether Spanish subjects or Americans, were to be deemed enemies of the United States, and their property

[21] Posselt v. d'Espard, 87 N. J. Eq. 571. The distinction is applied, though not mentioned, in Techt v. Hughes, 229 N. Y. 222.

[22] Planter's Bank v. Union Bank, 16 Wall. 483; Ochoa v. Hernandez, 230 U. S. 139.

[23] The Venice, 2 Wall. 258, 274.

[24] Ware v. Hylton, 3 Dall. 199, 225.

[25] White v. Burnley, 20 How. 235, 249.

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enemy's property and subject to seizure, confiscation, and destruction."[26]

"War is not war between Sovereigns or Governments alone. It puts each subject of the one belligerent into the position of being the legal enemy of each subject of the other belligerent."[27]

This is the law. Even if the general practice prior to the World War was contrary thereto, and it might then have been said with truth that in modern times increased emphasis has been laid on the distinction between the combatant portions of belligerent states, it is doubtful whether now the distinction has not begun to vanish, and practice and principle have not begun to revert to the strictly legal conception.

A remark of von Moltke has often been cited as an extremist opinion of an ultra-militaristic military man, for he declared:

"I can by no means profess agreement with the Declaration of St. Petersburg when it asserts the weakening of the military forces of the enemy is the only lawful procedure in war. No; you must attack all the resources of the enemy's government—its finances, its railways, its stores, and even its prestige."[28]

This is not a distinctly military view, nor is it the view of a single military man of a single nation. A high British court decided that "the means to be employed include . . . the damage, destruction, and appropriation of property, and injury to the general resources of the country."[29] The Supreme Court of the United States remarked:

"The right of one nation not only to coerce the other by direct force, but also to cripple his resources by the seizure or destruction of his property, is a necessary result of a state of war. Money and wealth, the products of agriculture and commerce, are said to be the sinews of war, and as necessary in its conduct as numbers and physical force."[30]

When the American Civil War was in progress, it was not too much to say that "the life of the Confederacy depended as much upon its cotton as it did upon its men. . . . It was the foundation upon which the hopes of the rebellion were built."[31] It was "potentially an

[26] Herrera v. U. S., 222 U. S. 558.
[27] Daimler v. Continental Tyre Co., L. R. (1916) A. C. 307, 328.
[28] Cited in Holland, *War on Land*, p. 12.
[29] The Flad Oyen, 1 C. Rob. 134.
[30] The Prize Cases, 2 Black, 635.
[31] Lamar v. Brown, 92 U. S. 187.

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auxiliary of the enemy by which they would be able to secure warlike supplies abroad."[32]

Victory is not won by army or navy alone," says Spenser Wilkinson, "it must be the work of the whole nation.[33] "Since the French Revolution," says Frank Taylor, "the dominant type of the European army has been the nation in arms."[34] So the way in which the World War was fought by the principal belligerent powers, and the way in which future great wars will probably be fought, was perhaps never so well described as by President Wilson in his message of April 15, 1917 to his fellow countrymen, in which he said:

"Our industries, on the farms, in the shipyards, in the mines, in the factories, must be made more prolific and efficient than ever. They must be more economically managed and better adapted to the particular requirements of our task than they have been. . . . The men and women who devote their thought and their energy to these things will be serving their country and conducting the fight for peace and freedom just as effectively as the men on the battlefield or in the trenches. The industrial forces of the country, men and women alike, will be a great national, a great international, Service Army,—a notable and honored host engaged in the service of the nation and the world, the efficient friends and saviours of free men everywhere. Thousands, nay, hundreds of thousands, of men otherwise liable to military service will of right and of necessity be excused from the service and assigned to the fundamental, sustaining work of the fields and factories and mines, and they will be as much part of the great patriotic forces of the nation as the men under fire."[35]

It is also interesting to note two post-bellum pronouncements on this topic. The first is from an editorial in the American Legion Weekly:

"The soldier on his belly on a field of fire, the workman at his bench in a factory, the executive at his desk in an office—alike they serve the flag."[36]

The second is from an announcement by the Assistant Secretary of War, Dwight F. Davis, regarding plans for industrial mobilization in our next conflict:

[32] Young v. U. S., 97 U. S. 39, 59.
[33] *Government and the War*, pp. 229–230.
[34] *The Wars of Marlborough*, vol. i. p. 5.
[35] Wilson, *In Our First Year of War*, p. 34.
[36] *American Legion Weekly*, editorial, June 8, 1923, p. 8.

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"Wars are no longer fought by the armed forces alone. Every man, woman, and child, every resource and every dollar in the entire nation must throw its weight toward victory in time of war. Industry alone cannot win a war; but it can lose a war by failing to supply the armies with munitions, vital to their fighting efficiency."[37]

Strange indeed it seems, therefore, to find a legal mind referring to the contrary statement of the President, and saying that the German government and German people were separate, and that the German people should not be affected "except so far as the legitimate interests of the United States require." In other words, the government and people of the United States were supposed to have been at war with the supposedly isolated German government. All of our population was presumed in the war, which we wished to wage not upon the enemy population but upon the enemy politicians alone. And yet the Germans were organized for the combat in the same fashion as the Americans. The nations of the world were all organized the same way too. So will they be organized in the future.

Perhaps we might also go as far as to concur in the opinion of Colonel J. F. C. Fuller, who, in his recent volume on the *Reformation of War* has said:

"A few years ago armies alone went forth to battle; today entire nations go to war, not only as soldiers but as the moral and material suppliers of soldiers. This being so, we find that, while a short while back it was clearly possible to differentiate between the military and ethical objective of nations at war, today this differentiation is becoming more and more complex; so much so that both these objectives are likely to coincide, and, when this takes place, to attack the civilian workers of a nation will then be as justifiable as an act of war as to attack its soldiers."

Note also that the assistant secretary of war has said:

"Bombing planes and airships could sever all communications and have at their mercy all of our important Atlantic seaports and industrial centers, striking a vital blow at the heart of our nation. . . . We must realize that it is not only the Army and the Navy which may be on the fighting lines. We must realize that there may be no noncombatants."[38]

ELBRIDGE COLBY.

Washington, D. C.

[37] *Industrial Mobilization,* pamphlet published by the War Department, 1923; reprinted in the *Congressional Record* (House), March 22, 1924, vol. 65, p. 5029.

[38] Dwight L. Davis, speech at St. Louis, Mo., Oct. 1, 1923, War Department press release.

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NEWS AND NOTES

Personal and Miscellaneous

EDITED BY FREDERIC A. OGG

University of Wisconsin

By vote of the executive council and board of editors, the twentieth annual meeting of the American Political Science Association will be held at Washington, D. C., December 29–31, 1924. Nineteen members voted for a meeting in Washington alone, six for a meeting divided between Washington and Richmond, Va. The program committee, appointed by the president of the Association, consists of Professors Leonard D. White, University of Chicago (chairman), L. D. Allin, University of Minnesota; R. C. Brooks, Swarthmore College; R. E. Cushman, Cornell University; and T. H. Reed, University of Michigan. Professor C. E. Hill, of George Washington University, is chairman of the committee on local arrangements. In accordance with authority granted at the Columbus meeting a committee on instruction in political science has been appointed as follows: P O. Ray, Northwestern University, chairman; Roscoe Ashley, Pasadena, California; W. B. Munro, Harvard University; F. E. Horack, University of Iowa, and T. J. McCormack, LaSalle, Illinois. A new committee to cooperate with the International Congress of Administrative Sciences consists of Professors Leonard D. White, University of Chicago, chairman, and A. R. Hatton, Western Reserve University. The Committee on political research has been reconstructed so as to include C. E. Merriam, University of Chicago, chairman; J. A. Fairlie, University of Illinois; L. F. Gulick, New York City; A. N. Holcombe, Harvard University; and W. F. Willoughby, Washington, D. C.

Professor Henry Jones Ford, of Princeton University, is absent from the country on a trip around the world, from which he expects to return in the early summer.

Dr. Stanley K. Hornbeck, formerly of the University of Wisconsin and subsequently with the department of state in Washington, has been appointed lecturer on the history of the Far East at Harvard University.

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Professor J. Q. Dealey, of Brown University, has been giving a course of lectures at the Naval War College at Newport on American foreign policy.

Dr. H. W. Dodds, secretary of the National Municipal League, continued during the first semester of the current academic year to carry the work of Dr. C. L. King in the Wharton School of the University of Pennsylvania. In mid-winter he was called to Nicaragua for work in connection with the administration of the election law of that country.

Mr. Clinton Rogers Woodruff, of Philadelphia, is in charge of graduate work in municipal government at the University of Pennsylvania during the second semester of the present year, and Dr. Frank D. Graham, of Princeton University, is conducting the graduate and undergraduate courses in public finance.

Professor Francis B. Sayre, now adviser to the government of Siam, has been promoted to a full professorship in the Law School of Harvard University.

Dr. James Brown Scott, president of the American Institute of International Law, gave a series of six lectures at New York University in March on the general subject of Sovereign States before Arbitral Tribunals and Courts of Justice.

Mr. John J. George, Jr., assistant professor of political science in Denison University, has been granted leave of absence for 1924–25 in order to accept an assistantship in political science at the University of Wisconsin and continue his work toward the doctor's degree.

Mr. O. Douglas Weeks, who is completing his work for the doctor's degree at the University of Wisconsin, has been appointed as instructor in political science at the University of Texas.

Professor W. Leon Godshall, of Union College, has been awarded the Penfield traveling fellowship in international law and diplomacy by the University of Pennsylvania and will be on leave of absence during the year 1924–25.

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Dr. Harry T. Barth, instructor in political science at the University of Pennsylvania, has been appointed assistant professor of government at the University of Oklahoma.

At a special meeting of the governing board of the Pan-American Union held March 12, 1924, Dr. Esteban Gil Borges, formerly a professor of international law and diplomacy at the University of Caracas, and minister of foreign affairs of Venezuela, was elected assistant director of the Union to fill the vacancy caused by the death of Dr. Francisco J. Yanes.

Dr. Graham H. Stuart has been promoted to associate professor at Stanford University. In addition to his courses in international organization, the League of Nations, and foreign service, Professor Stuart will offer an introductory course in international law.

Ex-President Arthur T. Hadley delivered the West Memorial Lectures for 1924 at Stanford University on April 22, 23, 24. The subjects of the lectures were Industrial Problems and Political Ideals, The Uses and Dangers of Property Right, The Uses and Dangers of Representative Government. The series is to be published under the title, The Conflict between Liberty and Equality.

A School of Social Sciences has been established at Stanford University. It includes the departments of economics, history, philosophy, and political science, and a few professors from the departments of psychology, law, statistics, and others. The purpose of the new school is to secure better correlation of the work of the various departments and to provide courses of study in the general field of public affairs for students who do not wish to specialize in any one of the subjects included in the field. The school is to be managed by an executive committee chosen by the faculty of the school.

Professor Kirk H. Porter, of the State University of Iowa, has practically completed a compilation of national party platforms, which will be published by the Macmillan Company during the summer.

Professor Jacob Van der Zee, of the State University of Iowa, is on leave of absence this semester for the purpose of indexing the new Iowa Code. During his absence Mr. Virgil Hancher, a recent graduate of Oxford, has been conducting his course on The Common Law of Eng-

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land, and Dr. Sudhindra Bose has been conducting his course on World Politics.

A Commonwealth Conference is to be held on June 30 and July 1–2 at Iowa City under the auspices of the State University of Iowa. The conference will be organized on the round-table plan. The general theme will be Problems of the Electorate. Discussion will be confined to special phases of the general theme such as, The Electorate and the Government, The Electorate and Party Organizations, The Electorate and World Politics, and others. Chairmen of the round tables will include Professor J. W. Garner, of the University of Illinois, Professor C. E. Merriam, of the University of Chicago, Professor A. R. Hatton of Cleveland, and Hon. M. J. Wade, judge of the United States district court for the southern district of Iowa. Representatives of political parties, the League of Women Voters, the Federation of Women's Clubs, and like organizations will participate. Professor Benjamin F. Shambaugh, head of the department of political science at the State University of Iowa, is chairman of the committee on program and arrangements.

The Norman Wait Harris Memorial Foundation has made it possible for the University of Chicago to offer unusual opportunities for the study of international relations during the coming summer term. The University announces that Sir Valentine Chirol, formerly with the British foreign office, Dr. Herbert Krause of the University of Konigsberg, and Dr. Charles DeVisscher, of the University of Ghent, have been secured to lecture, from June 25 to July 18, on present European conditions. Professor Ramsay Muir will also be present if his parliamentary duties permit. It is proposed to organize a conference among the visiting lecturers, the resident professors in the field of international relations, local bankers and business men, and representatives of the state, navy, war and other departments at Washington for the detailed study of some important European problem.

Professor J. W. Garner, of the University of Illinois, will give courses in comparative government and history of political theories during the first term of the summer quarter at the University of Chicago. Professor Victor J. West, of Stanford University, will continue the course in comparative government during the second semester and will give also an advanced course in American government designed especially for teachers of civics.

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Dr. Edward Jenks, principal and director of legal studies of the British Law Society, has been appointed first occupant of the newly created university chair of English law at the London School of Economics and Political Science. The appointment dates from August 1, 1924. Dr. Jenks has served in times past as dean of the faculty of law in Melbourne University 1889–1892), Queen Victoria professor of law in University College, Liverpool (1892–1896), reader in English law at Oxford and tutor and lecturer in Balliol College (1896–1903).

Baron Serge A. Korff, professor of Russian history at Columbia University, and first vice-president of the American Political Science Association, died suddenly in Washington on March 7 at the age of forty-eight. Baron Korff came of an old noble family, of Baltic origin. which for a century occupied important posts at the Russian court. Educated at the University of Petrograd, he belonged to the group of intellectual liberals led by Prince Lvov and Milioukov, and during the period of the provisional government of 1917 he served as lieutenant governor of Finland. The bolshevist revolution abruptly terminated his career in his own land, and in 1918 he came to the United States—a land with which he already had connections through marriage with an American lady. In this country his scholarship and ability as a lecturer and teacher, combined with an exceptionally winning personality, brought him recognition and favor, and enabled him to make large contributions to the main currents of intellectual life. He gave courses at Johns Hopkins, George Washington, and other universities; he was an outstanding figure at the successive meetings of the Institute of Politics at Williamstown; he became a member of the staff of the Foreign Service School of Georgetown University, and also of the newly founded Academy of International law at The Hague. In July, 1923, he was called to the Faculty of Political Science of Columbia University and at the time of his death had begun a service that promised to be distinguished and productive. His passing means a heavy loss to the university, to the learned societies with which he was identified, to intellectual life generally, and to the interests of international understanding and good-will.

The semi-annual meeting of the New York Academy of Political Science held on April 15 took the form of a national conference on wealth, debt, and taxation. The first session, presided over by Professor E. R. A. Seligman of Columbia University, was devoted to the subject of

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income and inheritance taxes; the second session, presided over by Mr. Dwight W. Morrow, of J. P. Morgan and Company, dealt with the relation of taxation to business prosperity; and the third session, with Dr. Albert Shaw, editor of the Review of Reviews, in the chair, took up wealth and public indebtedness. At the last-mentioned session Professor T. I. Parkinson, of Columbia University Law School, presented a paper on an administrative taxation court, and Mr. Alexander W. Gregg, special assistant to the Secretary of the Treasury, discussed the relation of the federal tax laws to the methods of preventing the avoidance of taxes.

The fifth annual meeting of the Southwestern Political and Social Science Association was held at Ft. Worth, Texas, March 24–26. The sessions were devoted to sections on public law, government, history, international relations, economics, and sociology. Officers elected for the ensuing year are: president, W. M. W. Splawn, railroad commissioner, Austin, Texas, formerly professor of economics, University of Texas; vice-president, G. B. Dealey, Dallas, Texas, F. F. Blachly, University of Oklahoma, D. Y. Thomas, University of Arkansas; additional members of the Executive Committee, E. T. Miller, University of Texas, Thomas S. Staples, Hendrix College. Professor Herman G. James, of the University of Texas, was reëlected editor of the *Quarterly*, and Dr. Malbone W. Graham was reëlected associate editor. Mr. Frank M. Stewart, of the University of Texas, was reëlected secretary-treasurer.

Members of the advisory editorial board of the *Quarterly* were reelected as follows: Professors Blachly and Thomas, University of Oklahoma; C. F. Coan, University of New Mexico; M. S. Handman, University of Texas; and G. P. Wyckoff, Tulane University. Professors H. B. Chubb, University of Kansas, and W. B. Bodenhafer, Washington University, were elected new members of the board. It was voted to invite the states of Kansas, Missouri, and Colorado to affiliate with the Association and Dallas, Texas, was selected as the place for the next annual meeting, in April, 1925.

Dr. Lent D. Upson, director of the Detroit Bureau of Governmental Research, has been employed by the Republican county committee of Hamilton County, Ohio, to take charge of an investigation of the governments of Hamilton County and the city of Cincinnati, by a citizens' committee. The investigation is expected to continue four

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months or more and is engaging the services of fifteen or twenty specialists. It is of an unusual sort, having been organized by the Republican county committee with a view to meeting criticisms directed against the existing governmental agencies. The investigation is to cover all governmental units within the county, and the investigating committee is to make a public report offering suggestions for the improvement of methods and the securing of greater economy and efficiency in administration. During the past few years the Detroit Bureau of Governmental Research has undertaken a considerable amount of survey work of this nature. It has been jointly responsible for surveys of the government of the state of Ohio for the joint legislative committee, and of the state of Virginia for the governor; for the installation of budget procedure in the states of Virginia and South Carolina; and for surveys and installations of procedure in the cities of Kalamazoo and Flint, Mich., Manchester, N. H., and certain suburbs of Pittsburgh, Pa. Dr. Upson has been granted leave of absence in order to enable him to work with the investigating committee above mentioned.

The National Council of Learned Societies, with which the American Political Science Association is affiliated, has been given $6000 by the Carnegie Corporation to finance a survey of American learned societies in the field of humanistic and social sciences. Dr. W. G. Leland, of the Carnegie Institution in Washington, will be in charge of the work, which will probably be started during the summer.

The twenty-eighth annual meeting of the American Academy of Political and Social Science will be held at Philadelphia on May 16–17. The six sessions will be devoted to subjects as follows: Germany's economic and trade position, French policy and the European situation, the Russian situation and America's relation thereto, the effects of America's policy on the European situation, the World Court and international peace, and the elements of a world peace plan.

The fourth session of the Institute of Politics will be held at Williamstown, Mass., July 31 to August 29. Round-table conferences and leaders are as follows: (1) Population and Related Problems, Professor H. P. Fairchild, New York University; (2) the Conflict of Laws and International Trade, Mr. Arthur K. Kuhn, New York City; (3) Problems of Foreign Relationship with China, Mr. John V. MacMurray,

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Department of State, Washington, D. C.; (4) Inter-American Relations: the Elements of a constructive Pan-American Policy, Leo S. Rowe, director-general, Pan-American Union; (5) Problems of Political Theory, Sir Paul Vinogradoff, Oxford University, England; (6) the Financial Rehabilitation of Europe, Professor Allyn A. Young, Harvard University. Open conferences, which can be attended by any members of the Institute and its instructional and administrative staff, are announced as follows: (1) Public and Private Finance in International Commercial Treaties, Mr. William S. Culbertson, vice-chairman of U. S. Tariff Commission; (2) the Commonwealth of Nations, Mr. Lionel Curtis, London, and (3) Russia and its Problems, Mr. Boris A. Bakhmeteff, New York City.

A vacation course in history for a period of four weeks, beginning July 28, is to be offered by Oxford University with the assistance of teachers in the faculty of modern history. The subject of the course will be the history of the Middle Ages, with attention to such subsidiary studies as the economic and ecclesiastical history of the period and medieval political theory. Particulars concerning the course can be had on application to Rev. F. E. Hutchinson, Acland House, Oxford, England.

The Social Research Council, composed of three representatives each from the American Economic Association, the American Statistical Society, the American Sociological Society and the American Political Science Association, met at Chicago on February 18. Progress reports were made by Professor Horace Secrist for the committee on a survey of existing social science agencies, by Professor Chapin for the committee on abstracting social science material, by Professor Chamberlain for the committee on the publication of an annual index and digest of state session laws. The Council discussed at some length plans for a study of human migration on its social side, an inquiry in which the National Research Council's committee on human migration has asked the Social Research Council to participate and coöperate. A meeting of the committee on this subject will shortly be called for the purposes of considering the social aspects of the problem of migration and of formulating plans and projects for the investigation which is to be instituted this year. The Council also passed favorably on a plan for the study of international intercommunication of news, and a conference will shortly be assembled for the formulation of a specific plan of in-

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vestigation. The scope of this inquiry will probably include study of the existing agencies of intercommunication of news, the legal and financial problems involved, and also some aspects of the problem of international education and the formation of international attitudes. These two projects—the study of human migration in coöperation with the National Research Council's committee on the same subject, and the study of international news—will constitute an important part of the Council's program for the next year, and if the expected financial support is found, part of which is already available, substantial progress will be made.

The Council also authorized the appointment of a committee for the consideration of methodology in the social sciences, with the expectation that this committee will include representatives of some of the natural sciences, working in coöperation with the Council's social science representatives.

As at present constituted, the Council consists of the following persons: representing the American Economic Association, Professor Horace Secrist of Northwestern University, Professor John R. Commons, of the University of Wisconsin, and Dr. Davis of Stanford University and the Pure Food Institute; representing the American Political Science Association, Professor R. T. Crane of the University of Michigan, Professor A. B. Hall of the University of Wisconsin, and Professor C. E. Merriam, of the University of Chicago; representing the American Sociological Society, Professor F. S. Chapin of the University of Minnesota, Professor W. F. Ogburn of Columbia University, and Mr. Shelby Harrison of the Russell Sage Foundation; representing the American Statistical Society, Professor W. F. Willcox of Cornell University, Professor C. A. Day of the University of Michigan, and Professor H. L. Rietz of the University of Iowa. The officers for the ensuing year are Charles E. Merriam, chairman, and Horace Secrist, secretary.

The second annual meeting of the National Conference on the Science of Politics will be held at the University of Chicago, September 8–12. The Conference will adhere to its original purpose of confining its efforts exclusively to questions of scientific method in political research. The general plans evolved at the Madison Conference will be followed at Chicago, subject to some few modifications in detail.

It is the policy of the executive committee to continue the same round-tables established last year, but to confine the efforts of each group to a more restricted field by announcing a definite sub-title in

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each case. It is expected that these sub-titles will be changed from year to year. Wherever possible the same directors have been asked to continue for another session, in order to give as much continuity as possible to the work of the several groups. As far as practicable, old members will be assigned to the round-table they attended the preceding year, and new members will be assigned according to the preference expressed.

The general plan of the work for each subject will be placed in the hands of all members three months before the conference convenes, in order that each person may come prepared for a more definite contribution to the work of his group. The program for the Conference is not yet completed, but the following list of round-tables and chairmen is announced, subject to change:

1. *Politics and Psychology.* A study of the significance of psychology for the study of government and of certain specific problems involving both psychology and politics. Chairman, C. E. Merriam, professor of political science, University of Chicago.

2. *The Personnel Problem.* Scoring the work of the civil service commission. Chairman, W. E. Mosher, Bureau of Municipal Research, National Institute of Public Administration.

3. *Public Finance.* State supervision of municipal finance. Chairman, F. P. Gruenberg, formerly Director of the Bureau of Municipal Research of Philadelphia.

4. *Legislation.* Chairman, H. W. Dodds, editor of the National Municipal Review.

5. *Political Statistics.* The measurement of public opinion. Chairman, A. N. Holcombe, professor of political science, Harvard University.

6. *Public Law.* (Sub-topic and Chairman to be announced.)

7. *Nominating Methods.* The development of a technique for testing the usefulness of a nominating method. Chairman, Victor J. West, professor of political science, Stanford University.

8. *International Organization.* International judicial organization and practice. Chairman, Pitman B. Potter, associate professor of political science, University of Wisconsin.

9. *Municipal Administration.* Development of a method of rating the relative efficiency of cities. Chairman, E. A. Cottrell, professor of political science, Stanford University.

10. *Administrative Law.* Chairman, Ernst Freund, professor of law, University of Chicago.

The committee on local arrangements, headed by Professor Leonard D. White, promises the conference a pleasant week, including a yacht trip on Lake Michigan, theater parties, an auto excursion up the north shore, and special excursions for smaller groups to points of interest

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in and around Chicago. The University of Chicago has placed its best dormitories and equipment at the service of the Conference. Ample arrangements will be made for members who wish to be accompanied by their families.

The executive committee in charge of the conference this year is as follows: A. N. Holcombe, professor of political science, Harvard University; C. E. Merriam, professor of political science, University of Chicago; Lent D. Upson, director of the Detroit Bureau of Governmental Research; Luther Gulick, secretary, director of the National Institute of Public Administration; Arnold Bennett Hall, chairman, professor of political science, University of Wisconsin.

The Second International Congress of Public Administration. Nearly forty years ago Woodrow Wilson pointed out in a brilliant article in the *Political Science Quarterly* that students and officials had given much more attention to the study and the practice of administration in Europe than in the United States, an attention which was in part the outcome of the more highly developed administrative systems, in part of the different tradition which underlay those systems, and in part of the desire of those in authority to make administration rest as easily as possible on the populations administered.

It is not surprising, therefore, that the first organized movement for the study of administration came from the continent and crystallized in the first International Congress of Public Administration (*Premier Congrès International des Sciences Administratives*) held in 1910 at Brussels under the patronage of the king of Belgium. The reports of this Congress were published in five volumes containing articles on problems of administration by delegates from various countries. The first Congress left behind it a permanent International Committee with instructions to call a second convention. Unfortunately the world War made it impossible for any steps to be taken in this direction until, in the spring of 1923, the Spanish members of the International Commission proposed that the second Congress be held in Brussels in September.

The second Congress was very widely attended both by official delegates from some thirty governments and by unofficial delegates from others. Among the governments officially represented were Spain, Portugal, France, Belgium, Holland, Italy, Rumania, Czechoslovakia, Finland, Denmark, Sweden, Greece, Cuba, Bolivia, Chile, Hungary and China. Unofficial delegations were present from England, about ten members of the Society of Civil Servants attending; with others from

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Switzerland, Sweden, and the United States. No delegates from either Germany or Austria were present.

Sessions of the Congress were held from September 13–16 at the Palais des Académies; at the same time there had been prepared in the Palais Mondiale an administrative exposition, which was exhibited to the Congress under the guidance of the distinguished secretary, M. P. De Vuyst.

The Congress worked chiefly through five sections, all the delegates meeting, however, for a formal opening session addressed by M. Cooreman and by M. Henri Fayol, a leading exponent of public administration on the continent; also meeting again for a general closing session at which each of the sections reported its resolutions for adoption. The sections respectively dealt with: 1. Municipal administration; 2. Administration in jurisdictions intermediate between the state and municipalities; 3. Central organization, public and private; 4. International administration and documentation; and 5. Training for public office and improvement of methods of administration.

On the whole the program was overloaded. With only one exception each section was under great pressure to get over the ground laid out for it, and in one or two cases the attempt to cover the ground was definitely abandoned. Papers on the topics proposed were sent in some two months prior to the meeting, and were in print for the use of the delegates. Within each section the procedure was, first, the oral summary of these papers followed by an informal and general discussion of the points involved; second, the submission of a resolution formulating a proposition which, in turn, became the subject of comment and discussion. As is not uncommon in meetings of this sort, the presiding officer was forced to keep discussion within rather narrow bounds, and to limit the amount of time which could be given to the consideration of any one topic. Frequently the discussion became animated, half a dozen delegates seeking the floor at once, and perhaps a dozen others talking and gesticulating with their neighbors. Only the very exceptional qualities of the presiding officers enabled the sections to carry through their work.

In a way the resolutions form the best indication of the work of the Congress, although they are in many respects unsatisfactory as formulations of principles of public administration. They were necessarily drawn after a rather brief discussion and more than once they had to be drawn in sufficiently general terms to satisfy conditions in countries of widely varying conditions and circumstances. The language therefore not infrequently lacked precision and was in effect nothing more

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than a noncommittal expression of a general wish. In order to present a brief summary of the conclusions to which the Congress came, the important resolutions of each section will be summarized.

The first section, dealing with municipal administration, proposed that administrative courts be established for the protection of municipal rights against the encroachment of the central government, that legislation define the limits of municipal ownership in view of the interests both of the consumer, of the taxpayer, and of freedom of commerce, that municipal officials be freed from the influence of partisanship and be assured of permanence of employment.

The second section, dealing with administrations intermediate between the state and the municipality, presented no resolutions.

The third section, dealing with central administration, presented resolutions only on a part of the ground assigned to them, and proposed that administrative reform be in conformity with principles tested by experience, especially with those principles found successful in the conduct of business. It also proposed that the study of administrative reform should rest on a cordial coöperation of public officials, specialists in questions of administrative law, and men of practical experience in the management of large private affairs.

The fourth section gave its attention primarily to documentation. It proposed that the International Congress edit a *Receuil International* in which should be developed methods of documentation, that public services establish connection with the International Institute of Bibliography, that the International Congress designate a group of officials to assume responsibility for keeping in touch with this International Institute of Bibliography, that the Congress take the initiative in making a collection of the laws governing administration in each country, that it prepare a comprehensive bibliography, and, finally, that the administrative exhibits be further developed.

The fifth section, which considered more nearly what American students think of as primarily in the field of public administration, proposed that the status of public officials be regulated by law, defining the ensemble of reciprocal rights and obligations of the administration and officials to include particularly rules on the following points: 1. The general regulations which should govern recruitment of public officials (competitive examinations); 2. The guarantee of a fair salary (cost of living minimum); 3. The obligation of each administration to grant its agents a special statute covering the conditions of promotion and establishing legal remedies to ensure that public officials be pro-

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tected in this respect from arbitrary action; 4. The recognition of the right of association of public officials for the defense by legal means of their professional interests, the right of strike being expressly forbidden; 5. The obligation of the administration to determine cases in which there should be incompatibility of office; 6. Guarantee to officials of a retirement pension.

With respect to the recruitment and training of the higher officials this section proposed that competitive examinations be required for entrance into an administrative career, that there be a probationary period, that final selection be made upon the basis of special theoretical and practical tests, and that promotion to the higher positions be administered (a) by establishing a list of names of persons eligible to promotion; (b) by requiring annual statements from the immediate superior officers of the qualifications of candidates, which statements should be open to inspection by the officials concerned, who might, it was proposed, appeal to a committee on promotion; (c) by authorizing the nomination of the candidate for promotion only after the promotion committee has given its opinion. This committee is to be composed of the highest officials of the service, together with representatives of the personnel chosen from among their own number. This section finally urged that there be created in every country an institute of public administration modeled on the British Institute of Public Administration, to become a center of the study of administration.

Each of these resolutions and others of less importance were read and approved at the final meeting of the Congress. Speeches were also made by delegates from several countries, expressing their gratification at the success of the Congress. At this time the writer had the privilege of presenting to the Congress the greeting sent by the First National Conference on the Science of Politics held in Madison two weeks earlier. The following quotation from the records of the Congress gives the terms of the cordial reply which was sent to Professor A. B. Hall:

"M. le Président.—Le Congrès remercie M. le professeur White de la communication qu'il vient de nous faire au nom d'une très importante société savante. Voici la lettre que je vous propose d'envoyer, en remerciement, à M. A. B. Hall, président du Congrès des Professeurs d'économie politique, tenu à Madison:

Monsieur le Président,

Le II[e] Congrès des Sciences administratives, qui tient ses assises à Bruxelles, remercie vivement la Conférence des professeurs de science politique pour l'adresse qu'elle a bien voulu envoyer au Congrès. Nous en avons été profondement touchés et en sommes très reconnaissants.

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Le Congrès y voit le gage d'une coopération de plus en plus étroite de tous ceux qui dans l'ancien et le nouveau monde travaillent avec tant de désintéressement au bien général.
Veuillez agréer, Monsieur le Président, l'expression de notre haute considération. Le Président du Congrès." (Applaudissements).

An account of the Congress would be quite incomplete without notice of the various receptions, excursions and other hospitalities which were extended to the delegates. One of the most pleasant of these was an excursion to Antwerp at the close of the convention, in the course of which the delegates were not only escorted about the city, but taken over the harbor of Antwerp and given the opportunity to examine the immense dock facilities of this port.

For American students of administration certain observations suggest themselves. Clearly here is an important international organization from which we cannot hold aloof. The next session of the Congress is to be held in Paris in the spring of 1926 and steps should be taken to ensure adequate representation of the United States on this occasion. The work of the convention can be substantially developed, especially along lines of bibliography and documentation, and the building-up of a great exhibit of administrative forms, the nucleus of which is now to be found in the Palais Mondiale. It may be suggested incidentally that the United States likewise needs a common center or centers for these same purposes.

The methods of work of the Congress are methods which have distinct merits. Although each section tried to do too much, the general principle on which they rest, that of specialization and intensive consideration of some limited problem, is one from which good results can be expected. The practice of directing the discussion toward the formulation of a proposition is one which tends toward definiteness, and toward the elimination of irrelevant discussion. The general meetings, held at the beginning and at the close of the Congress, gave an opportunity both for general addresses on topics of administration and for the review of the work of the different sections. The establishment in 1923 of a new section, at which personnel problems were under consideration, is an indication that among European students administrative law, which has primarily held their attention, is giving way in part to what M. Fayol terms *"la doctrine administrative"*—public administration.

LEONARD D. WHITE.

University of Chicago.

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BOOK REVIEWS

EDITED BY W. B. MUNRO

Harvard University

Grover Cleveland: The Man and the Statesman. By ROBERT MCELROY. (New York: Harper and Brothers. 1923. 2 vols. Pp. xi, 359, 427.)

This is an "authorized biography," as the title page indicates. It may also be called authoritative. The author has had access to the papers, documents, and letters necessary to enable him to present the more intimate and personal aspects of his subject, and he has succeeded admirably in making Cleveland, the man, in his rugged and better qualities, stand out before us with vivid distinction. The last chapter on "Sources" is so full and complete and so well arranged as to deserve special notice and commendation by the reviewer. If the student wishes to go beyond the case for Mr. Cleveland as presented by the author, he is shown most generously in this chapter where he can find his material. In these two volumes we have what is likely to be the final word on the character and work of Grover Cleveland. The volumes are handsomely printed, in large type, on good paper with ample margins, presenting a fine specimen of the publishing art.

As to measures of state, the work is largely a defense, though not a vindication, of the public policies for which President Cleveland stood. Professor McElroy has not attempted a history of the times in which Mr. Cleveland lived and wrought, though his pages contain much good material for that history. Here we find, however, a valuable *ex parte* presentation from the Cleveland point of view of the great controversies of the era. The work is obviously written for the honor of Mr. Cleveland. The best that can be said for him is here said. There is much of praise and eulogy, and, although minor inconsistencies and mistaken judgments are pointed out, in all important issues the hero is made to appear well. Letters and comments from Cleveland's friends, appointees, and political colleagues are quoted extensively in praise of the noble and devoted public servant who was standing stoutly in the "high performance of duty," or who was making a brave fight for the "honor and welfare of his country." The sturdy President, amid

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the storm and stress that raged around him, was always the calm and steadfast pilot at the helm "holding the rudder true" and keeping the ship of state in her unswerving course.

But as a matter of history the case is not so simple for President Cleveland. Fierce and bitter controversy, political and industrial, beat about the seat of Cleveland's power. This controversy is likely to continue among the writers of American history. The allotment of praise and blame, of approval or disapproval, will not be found so easy by the muse of history as our biographer would make it appear. Yet, it should be said with emphasis that the student or reader who wishes to know American history for the last quarter of the nineteenth century will not venture to neglect these volumes. They are invaluable. They deal with the outstanding movements and interests of the time.

Passing by the earlier and more obscure life of Cleveland, we find him as a reform governor of New York; we are given a good account of him in the Mugwump campaign of 1884, which President Andrew D. White called "the vilest campaign in our history,"—not having lived to witness that of 1920. Then we see Cleveland "alone in the White House," standing off the spoilsmen in an all but hopeless fight, which Professor McElroy calls "facing the breadline." This is followed by excellent chapters on the struggle for executive independence and for pension reform, the latter telling of Cleveland's commendable and laborious effort to save the pension rolls from dishonor, an effort which, through misrepresentation, aroused the opposition and wrath of many members of the Grand Army of the Republic. Cleveland's policy toward the Indians, the "wards of the nation," and in foreign affairs toward Bismarck and Samoa, and his "throwing away the presidency" in 1888 by a bold policy and outspoken conviction on the tariff; his brief retirement and his unprecedented restoration to the presidency in 1892,—these chapters complete the contents of the first volume. They present the essential aspects in the political history of the times.

The second volume deals chiefly with the more important financial and industrial problems of Cleveland's second term, including the rise of the Bryan democracy, the silver struggle, and the efforts to break the "endless chain" in order to keep the gold reserve intact; the Wilson-Gorman tariff; the great Pullman strike of 1894; and the readjustment of parties in 1896, when Cleveland found himself a President—the first and last in our history—who was repudiated by a national convention of his own party and who helped to promote, and rejoiced to see, the triumph of the opposition. The author calls Cleveland the "Warwick

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of 1896," presumably because he was the chief agency in making McKinley president in that year. The author denies that in that campaign Bryan had "borne the sins of Cleveland." But he claims to Cleveland's credit that the weight of the President's influence was thrown against Bryan's election; and it can hardly be denied, though the author fails to recognize it, that the great unpopularity of Cleveland's administration was a serious burden and handicap to Bryan's first candidacy. Cleveland's arch enemy within his party and in New York politics, Senator David B. Hill, offered in the Democratic national convention of 1896 the resolution endorsing the administration of Cleveland, "gleefully conscious" that it would be overwhelmingly defeated. Cleveland was driven out of his party and "it was Hill who closed the door and double-locked it." There were occasions and causes that gave force and acceptance to the utterance that Cleveland was to be loved "for the enemies he had made." According to these volumes this applies alike to the corrupt party boss and to the new social democracy of Bryan.

But it may have been well for the historian of this period more fully to recognize that Cleveland represented a passing era. Events and a new conception of social welfare were pushing him aside, and his party could never win again—and it never has—with a candidate in harmony with Mr. Cleveland's policies. These policies Professor McElroy brings into clear relief,—individualism, *laissez-faire*, opposition to paternalism and the enlargement of governmental activities, less of governmental control in business and industry. Within this philosophy of government, Cleveland insisted upon policies which no party would ever oppose and vigorously illustrated them, be it said to his credit, namely, economy, honest administration, progress in civil service reform, and a "sound and stable currency." On the question as to how a "sound currency" was to be obtained there was, of course, a wide difference of opinion. What Cleveland thought and did about it these volumes amply show. There is, however, no evidence in these volumes (nor elsewhere, so far as the reviewer knows) that Cleveland had ever been an intelligent and serious student of the money question. That question was settled in his own mind before he came into power. He accepted conventional and partisan terms and acted upon them as indicating the only possible policy.

There are other subjects of controversy on which the student of history will need other sources of enlightenment than these volumes afford, if he is to arrive at a final verdict. Is the injunction in labor disputes the proper governmental weapon for the strike? Was Cleve-

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land lined up "on the side of the railroads," and was he unsympathetic toward labor in his course toward Debs and the Pullman labor war? Is there a sufficient answer to Bryan's indictment (and the indictment of reputable journalists) that in 1893 for the repeal of the silver purchase law Cleveland "used all the patronage in his possession to corrupt members of Congress?" Did the President unduly favor "his friends on Wall Street" in the bond deal? These volumes would lead the reader to believe that all these suspicions and aspersions were baseless and malicious, and that only by such policies as Cleveland pursued could the honor and credit of the country be saved.

The volumes will not relieve Cleveland of criticism for his attitude toward Great Britain on the Lord Sackville-West incident and the Venezuela controversy; though the chapter on Venezuela is excellent, drawing wisely and well from documents and letters, and going far toward making its case.

Biographers may not be expected to present very fully the evil in the lives of their subjects nor the weaknesses in the causes for which they stood. In fairness it must be said that Professor McElroy has not failed to present "the other side." He has shown the sharp criticisms to which Mr. Cleveland was constantly subjected, though some important attacks are omitted. Ben Tillman's name does not appear in the index, and whether Cleveland's "fat sides" ever felt the prong of the redoubtable South Carolinian's pitchfork this biography does not reveal. An unsympathetic reader may get the impression that the hostile criticisms which the volumes present are brought in merely for the purpose of being refuted and not altogether for the sake of the whole truth of history.

In the main, these volumes will find a widespread and deserved approval among American readers. They are sure of a high place in our biographical literature, and students of our history will recognize a deep obligation to their author. The chapters on the private and family side of Mr. Cleveland's life are above criticism. They call for cordial praise for many interesting and intimate personal touches. The closing chapter on "Sunset Days" gives a picture of Cleveland, the man, when his work was done and mellowing time had laid its hand upon his life, that is calculated to make the stoutest opponent of Cleveland's politics forget the blasts of controversy and unite with his friends in admiration for an honest man of many virtues who always acted bravely in accordance with what he supposed to be the best interest of his country.

JAMES A. WOODBURN.

Indiana University.

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Richard Olney. By HENRY JAMES (Boston: Houghton Mifflin Company. 1923. Pp. 335.)

The Autobiography of T. Jefferson Coolidge. (Boston: Houghton Mifflin Company. 1923. Pp. 311.)

One by one, the lives of the worthies of our Victorian age are being published for the instruction and edification of the unregenerate sons and daughters of this generation. The life of that taciturn New Englander, Richard Olney, constitutes a notable addition to this list. Olney's public life was confined to the four years which he spent in Cleveland's Cabinet, first as attorney-general and then as secretary of state. His occupancy of the former office was characterized by the breaking of the Pullman strike, and of the latter by the Venezuelan controversy with Great Britain. This biography is chiefly valuable for the added light that it throws upon these two incidents.

The circumstances of the Pullman strike are familiar. The American Railway Union, led by Eugene V. Debs, refused to handle trains to which Pullman cars were attached in order to put pressure through the railroads upon the Pullman company to accede to the demands of the strikers in their plant. Olney demanded and secured an injunction restraining the union from interfering with the movement of trains on the ground that such a strike was, not only in violation of the Interstate Commerce Act, but more important still was an interference with the right of the public to the free flow of traffic. In thus resorting to the injunction, he furnished the precedent for multitudes of private employers as well as for several of his successors in the attorney-general's office. Once the injunction was obtained, Cleveland was enabled to throw a large force of troops into Chicago over the protest of Governor Altgeld for the purpose of upholding the injunction. From his own statement, Olney's chief purpose in securing the injunction seems to have been that he believed this was the only method by which Cleveland could be induced to use troops to break the strike.

The use of such methods illustrates two points of political importance. When taken in conjunction with the acts of Jefferson and Wilson, it shows that the Democratic party when in power has exercised a strong centralizing influence. It also demonstrates that if the government is intent only upon securing continuous production, it inevitably aligns itself on the side of the employers against the workers, for the only way in which the workers can press their demands is by an actual or threatened interference with production. Since the control of production is in the employers' hands, and they are empowered to fix the terms

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upon which work will be offered, the workmen are continually being placed in the position of being aggressors, if they protest at these conditions.

Olney may have been justified by the circumstances of this particular strike, but the precedent he furnished is a dangerous one. The public tranquillity itself cannot permanently be maintained by the "thou shalt not" of the injunction nor by the overawing use of military force. To establish industrial peace the government must probe the generating causes of industrial unrest and seek honestly to remedy them.

To Mr. Olney's credit, let it be said that he was as forthright in his dealings with Great Britain and Lord Salisbury as with the American Railway Union and Mr. Eugene V. Debs. "Today," he said in a note on the Venezuelan issue to Lord Salisbury, "the United States is practically sovereign on this continent, and its fiat is law upon the subjects to which it confines its interposition . . . . With the powers of Europe permanently encamped on American soil, the ideal conditions we have thus far enjoyed cannot be expected to continue." Many years later, Olney, in writing to Secretary Knox, declared that "the excuse" for these words "was that in English eyes the United States was then so completely a negligible quantity that it was believed only words the equivalent of blows would be really effective." These words did indeed arouse the British from their diplomatic dilatoriness, but they aroused all South America as well and they stirred up such a spirit of jingoism in our country as nearly led the two English-speaking nations into war.

T. Jefferson Coolidge, as his name indicates, was at the same time a lineal descendent of Thomas Jefferson and a Boston Brahmin. He acquired a comfortable fortune by speculating during the Civil War, which was augmented by his management of some of the cotton-mill properties of his father-in-law, William Appleton. Later he became a leader in the development of western railroads with New England capital. Although he had a sentimental fondness for the principles of Jefferson, his business interests led him to advocate protection and to oppose the free-trade tendencies of the Democratic party. He was appointed minister to France in 1892 by President Harrison and served for a year. The most important event that occurred during his incumbency was the furor aroused by the French discovery that the military attaché of the American legation had by bribery obtained the secret plans of some French fortifications, despite the fact that no such authorization had been given him, and although we did not possess

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a fleet capable of attacking a French city even had hostilities been considered, which of course they had not been. Well might Mr. Coolidge pray to be delivered from his military friends!

Taken together these two works are eloquent witnesses to the economic and political influence of New England upon our national life during the last decades of the nineteenth century.

PAUL H. DOUGLAS.

University of Chicago.

The Life or Sir William Harcourt. By A. G. GARDINER. (New York: George H. Doran Company. 1923. 2 vols. Pp. x, 608; vi, 670.)

Throughout the second half of the nineteenth century William Vernon Harcourt was one of the outstanding figures in British political life. Entering the parliamentary arena in 1868 as a Whig with leanings toward Toryism, he closed his career thirty-six years later in the radical group of the Liberal party. Tall, strong, and heavily built (he was almost the largest member in the House of Commons), he emphasized a brilliancy in debate with a striking personality. He possessed in addition a vigorous temper, to which he allowed almost complete freedom, except when social considerations forced him to shackle it. But his temperamental outbursts, though they added greatly to the interest of debate, seriously interfered with his ambitions to rise to the highest ministerial office. On the final retirement of Gladstone, Harcourt might have become prime minister had it not been for a temporary disagreement with his close friend, John Morley, whose influence was therefore exerted in favor of Rosebery.

A character of this type and prominence could not fail to find an enthusiastic biographer, and Mr. Gardiner has produced a narrative of unusual merit. Though always sympathetic toward his subject, he has not written without discrimination. It is clear that a temperamental statesman like Harcourt would frequently fall into error; and Mr. Gardiner is fully aware of this unfortunate fact. Except for a certain amount of unnecessary repetition, due no doubt to hasty composition, the work is written in excellent style; after the reader has traveled through the preliminary chapters, his attention is sure to be held to the last page.

Students of American history will find much in Mr. Gardiner's narrative that has a direct bearing on their own subject. Harcourt was always an enthusiastic friend of the Great Republic; and in the difficult days of the Civil War he threw all his influence into the balance on the side of the Union. "Inside the Cabinet Harcourt's step-father-in-law,

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Cornewall Lewis, was fighting the battle against recognition [of the South] with characteristic tenacity. He summoned his brilliant relative to his aid and together they produced a powerful memorandum for the Cabinet against recognition."

During the same period Harcourt was publishing in the *Times* a series of letters under the signature "Historicus," "which profoundly influenced the course of events and made them a perament contribution to the discussion of the relations of nations in time of war." To the student who is interested in the development of international law these and other related papers published on later occasions will have an abiding interest and value. The same is true of a great many of his speeches in Parliament, for Harcourt's career covered a period of great changes not only in the field of international relations but also in the constitutional framework of the British state.

L. M. LARSON.

University of Illinois.

Federal Centralization. By WALTER THOMPSON. (New York: Harcourt, Brace and Company. 1923. Pp. vii, 399.)

No reasons need be given to explain or justify the appearance of such a scholarly and stimulating treatise on the expanding scope of congressional legislation in the United States as that presented by Dr. Thompson in this volume. The frequent publication of articles and papers in current, legal and political literature defending or lamenting the centralizing tendencies in our federal system, many of which display a decided nationalistic or state rights bias, is sufficient to indicate a widespread interest in this question.[1] Its importance cannot be doubted. In the words of the writer, "the very life of a federal system depends upon a workable adjustment of the powers and functions of the central agency and the component local units."

Dr Thompson approaches the problem of federal centralization with the conviction that "social, economic, and psychological factors, as well as legal, must be considered in attempting to find a workable division of functions between the federal government and the states." His purpose is threefold: (1) to point out the constitutional bases for the expansion of federal activities; (2) to show how federal regulation has been

[1] For two recent discussions, see: Buford, "Federal Encroachments Upon State Sovereignty," *The Constitutional Review*, Jan. 1924, pp. 23–41; and Warren, "Destroying Our Indestructible States," *Atlantic Monthly*, March, 1924, pp. 370–78.

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extended into the field of social and economic legislation; and (3) to account for the tendency to centralize governmental functions and to indicate some of the problems attending a policy of centralization.

The book is divided into four parts. Part I, in addition to an introductory chapter, contains a brief summary of the views held by the early statesmen as to the nature of our federal system, and gives special consideration to the commerce clause, the federal taxing power, the postal clause, and the treaty power, as constitutional means for the extension of federal authority.

Part II is devoted, in general, to a discussion of the decisions rendered by the federal courts in the interpretation and application of congressional legislation for the regulation of public morals, for the promotion of public health and education, and for the regulation and prohibition of intoxicating liquors.

Part III briefly describes the history and methods of economic legislation, and presents the constitutional questions involved in federal regulation of transportation, corporations and business combinations, and labor.

In Part IV the author concludes his study by citing reasons to account for the phenomenon of federal expansion, and by indicating some of the constitutional and inherent limitations to federal centralization.

While it is not his intention to offer "a brief either for or against federal usurpation," the writer does not hesitate to express a conviction that the adoption of the eighteenth amendment was "both untimely and unwise," nor to question the feasibility of prohibiting child labor by a constitutional amendment. In general his attitude is possibly best expressed in the following: "While regulation of transportation appears to be more satisfactorily administered under federal control, 'morals' legislation, on the other hand, can probably be more advantageously left to the different states."

Dr. Thompson believes that a consideration of the Constitution as a living instrument suitable for present day needs "is rather apt to convince one that the central government has not exceeded its constitutional grant of power, but could even go further than it has in the past and still remain within its constitutional limitations." As to the constitutional possibilities for further expansion, he is particularly impressed with the changing policy toward federal control of intrastate railroad rates, and although he questions the advisability of federal grants to the states on a "fifty-fifty" basis, he admits that such a plan "is pregnant

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with possibilities for the further extension of federal influence in the determination of state policies."

Readers of this book will be somewhat disappointed because the author did not devote more of his time to the important questions raised in Part IV, where to a certain extent he was cultivating virgin soil. His discussion of "inherent" limitations to federal centralization is not convincing, partly due to its brevity. The vital problem of effecting a working compromise between the federal government and the states, based upon the idea of an intelligent division of labor rather than upon the idea of division of power, is approached only in general terms. The contention of such eminent writers as Dicey and Freund that concentration of political authority is an inevitable tendency in all federal states is not given adequate consideration. Admitting that such a tendency is to be discerned in the United States and in other federal systems, the author points, on the contrary, to certain indications of decentralization or deconcentration as evidenced by the movements for "functional devolution" in England and "regionalism" in France. But decentralized administration is quite a different thing from decentralized control based upon a constitutional division of powers.

The above criticisms are in no sense intended to detract from the value of Dr. Thompson's work, but to suggest possibilities for the further treatment of a subject too vital to be surrounded within the confines of a single volume.

LLOYD M. SHORT.

University of Missouri.

Recent Changes in American Constitutional Theory. By JOHN W. BURGESS. (New York: Columbia University Press. 1923. Pp. xi, 115.)

The American Constitution as it Protects Private Rights. By FREDERIC JESUP STIMSON. (New York: Charles Scribner's Sons. 1923. Pp. xv, 239.)

These two books merit careful and widespread attention. Professor Burgess, however, thinks our political outlook so gloomy that few except students and pessimists will have patience to read him. And Mr. Stimson's historical method of approaching current problems is likely to discourage casual readers before they have learned to appreciate that his opinions are keen, sane and up-to-date. But whoever reads to the end will feel repaid.

In 1898, according to Professor Burgess, our government was the servant of the people; the individual was secure in his person, his property

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and his expression of opinion, because the Constitution and the judiciary under the Constitution protected him against the legislative and executive branches of the government; and, finally, we had accepted "the doctrine of attending to our own affairs and of forbidding and resisting the interference of Europe in the affairs of the American continents." Since 1898 all this has changed. The distinction between government and sovereign people is being obliterated; the immunities, which the Constitution guarantees to the individual against the government, are threatened with extinction; and our nation is menaced with subordination to a world state. In short, the adoption of recent constitutional amendments, the subservience of our courts to legislation, and the propaganda of the League bid fair to ruin us. It would be easy to criticize the details of Professor Burgess' argument. Its most serious defect is a prevading exaggeration which discredits its valid contention that, for better or worse, the traditions of both our individualism and our nationalism are threatened.

Mr. Stimson does not here concern himself with international relations. On constitutional questions he is, like Professor Burgess, a strong individualist, but his arguments are tolerant and scholarly. One chapter of his book, that on the division of powers among federal government, states and people, was published in 1908, substantially as it now appears. The rest of the book is new, and in it the author brings down to date the history of our constitutional law as it affects private rights. A partial list of the topics discussed includes questions of race and sex, of labor and labor law, of military and administrative law, of the war powers of the government, of individual property rights, and of personal rights to free speech, a free press and a free religion. The conclusion is suggested that our most intimate and important personal affairs are being subjected to the scrutiny of the courts, and that unless we show livelier interest in our constitutional guaranties the courts may interpret those guaranties away.

Readers of this REVIEW are familiar with the judicial record. At times the court of last resort seems to lean toward the individual, at times toward the government. To select cases at random: Board of Trade v. Olsen, (1923) 262 U. S. 1, sustaining control by Congress of trading in grain futures; Hammer v. Dagenhart, (1918) 247 U. S. 251, invalidating the exclusion by Congress from interstate commerce of goods manufactured by child labor; Adkins v. Children's Hospital, (1923) 261 U. S. 525, holding void the minimum wage law of the District of Columbia as it affected women; and Bunting v. Oregon, (1917) 243

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U. S. 426, sustaining a general ten-hour law in factories, are decisions hard to reconcile on broad principles. In place of such principles we find emphasized in the opinions, distinction of degree, questions of reasonableness, presumptions of fact. The explanation seems to be that under existing political and economic conditions paternalism is almost inevitable, and that the courts find it difficult to fortify a constitutional defence of individual rights so that they can hold against the attack of paternalism. Whether or no the books under review alter our opinions, they should quicken our interest in the fight.

H. A. YEOMANS.

Harvard University.

Political Parties and Electoral Problems. By ROBERT C. BROOKS. (New York: Harper & Brothers. 1923. Pp. xvi, 638.)

This treatise on political parties and electoral problems is at once interesting, instructive, and valuable. It measures up to what we had reason to expect from the author's long and successful teaching experience, active participation in political campaigns, first-hand acquaintance with the arcana of election laws, and thorough familiarity with the best literature on American politics.

The book is divided into five parts. Three chapters (46 pp.), dealing with the nature and activities of parties generally, are followed by four chapters (96 pp.) tracing the history of American parties. Part III (282 pp.) is devoted to a detailed discussion of party committees, machines and bosses, nominating and campaign methods, campaign funds, election and ballot laws. Part IV (160 pp.) deals with short ballot, proportional representation, direct legislation, the recall, the spoils system, and civil service reform. The final chapter (39 pp.), entitled, "Active Participation in Politics," is perhaps the unique feature of the book. It advises new voters how to "break into politics," and the advice given is drawn principally from letters obtained from a large number of persons now or recently active in politics. The Democratic and Republican platforms of 1920 are printed as an appendix. Numerous illustrations and charts add to the attractiveness and value of the book. Each chapter, with one exception (on the recall), is followed by brief book notes referring to the best books, though seldom indicating the wealth of available periodical material; frequent footnote references to some of this literature, however, help to compensate for this omission. In several instances relevant works of fiction are also listed.

Some critics will feel that the chief fault of the book lies in the mass of details that crowd the pages of some chapters, and that the big trees

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would stand out more distinctly if much of this undergrowth had been cut away. Others will regret the omission of a few important topics, or the seemingly inadequate treatment of a few others. By sharply condensing the opening chapters on the general nature and activities of parties, and especially the long chapter (34 pp.) on minor parties in 1920, as well as passages tracing the history of the suffrage and describing administrative problems of civil service reform, space would have been left for at least mention of the fact that Lincoln's renomination in 1864 was not by the Republican party (p. 68), but by the Union party into which the Republican party had become merged; for more adequate discussion of the strictly political problems of civil service reform; and for the functioning of parties in legislative bodies, an especially regrettable omission.

Mistakes are inevitable in so comprehensive a treatise. The early Socialist practice of requiring candidates to sign blank resignations is treated as though it were still in force (p. 168). To an inquiry from the reviewer concerning the existence of the blank-resignation rule at the present time, the national executive secretary of the Socialist party replied, November 21st, 1923, as follows: ". . . . this rule was never incorporated in the national constitution of the Socialist party, and so far as the national organization is concerned, was never a requirement in campaigns, nor was it a general requirement of the state and city organizations, although in former years, in the earlier history of the Socialist party, it is quite true that the practice was in vogue. It gradually fell into disuse, and so far as we know, really is not in force anywhere at this time, although we cannot state this positively." The New Jersey law of 1911, requiring election officials to take civil service examinations, (p. 385) is no longer in force. The Virginia constitution of 1902 is not the only one during the past quarter of a century to be put into force without popular ratification (p. 459), two other instances having occurred in Louisiana in 1913 and 1921. Governor Frazier was not the only state official recalled in North Dakota in 1921 (p. 499); along with him were recalled the commissioner of agriculture and the attorney-general. Finally, the Colorado constitutional amendment providing for the recall of judicial decisions (pp. 491, 505) has been held invalid by the supreme court of that state.

None of these errors or inaccuracies, however, is serious and practically all of them can easily be corrected in future printings. The book is well-written throughout and, by reason of its indisputable merit, deserves wide recognition.

P. Orman Ray.

Northwestern University.

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The Democratic Machine, 1850-1854. By Roy Franklin Nichols. (New York: Longmans, Green & Co. 1923. Pp. 248.)

This monograph is not primarily a study of American party machinery, as the title might seem to indicate, but rather is concerned with "personalities and politics." It treats of the character and the maneuvers of those Democratic leaders who were in the political limelight before, during, and after the presidential campaign of 1852. In the words of Dr. Nichols, "The history of the Democratic party during the interlude between the sectional struggles of 1850 and 1854 presents an excellent field for the study of the *genus* politician. In those days public opinion was generally apathetic and the politicians plied their trade with little interference."

The author begins by describing the issues and the factional differences which, from 1844 onward, threatened to bring disintegration to the Democratic organization. Party victory in the presidential election of 1852 demanded that both the nominee and the platform be such as to command the support of the warring and discordant elements in the machine. Accordingly, Chapters 3 to 9 depict the prospective candidates and the efforts made by their friends to secure delegates to the national convention. One reads of Cass, "the last of the heroes;" of Buchanan, "the sage of Wheatland;" of William O. Butler; of the astute Marcy, of Douglas, "the Lochinvar of the Young Democracy;" and, finally, of Franklin Pierce, the "dark horse," secretly groomed by Edmund Burke and others. The Baltimore convention, which nominated Pierce on the forty-ninth ballot and promised steadfast adherence to the compromise of 1850, and the ensuing campaign are then discussed in a lively and graphic fashion. The concluding chapters deal with Pierce's unsuccessful attempt to distribute the officers equally among the various factions, to preserve party harmony, and to build up and maintain a strong organization based on the "cohesive power of the public plunder." Of particular interest to the political scientist is the descrip-description of just how the spoils system worked in 1852.

Although Dr. Nichols does not claim to advance new and striking general conclusions, he has, nevertheless, handled his subject in an effective manner. His thorough examination of newspaper, manuscript, and other contemporary sources in the Library of Congress and elsewhere has given to his monograph a freshness and a vividness of detail which make it of interest both to the general reader and to the special student. As such, it fills a useful place in the historical and political literature dealing with that period.

Roger H. Wells.

Bryn Mawr College.

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The Populist Movement in Georgia: A View of the "Agrarian Crusade" in the Light of Solid South Politics. By ALEX MATHEWS ARNETT. (New York: Columbia University Press. 1922. Pp. 239.)

Despite the assertion of a prominent historian in the *American Historical Review* a few years ago that the "farmer in politics" as "the subject of a separate treatise cannot yield very noteworthy results," monographic studies and articles on various phases of the history of Populism appear in increasing numbers, and the foundations are being laid for a comprehensive work dealing with the movement as a whole. After such a work appears, it may be hoped that writers of general histories will give more adequate treatment than heretofore to this "phase of American history which," even according to the historian quoted above, "should not be overlooked."

The contribution which Dr. Arnett has made to our knowledge of American history since the Civil War is a very considerable one. Not content with "presenting a fragment of state history," he has also written what amounts to the best general history of Populism available, and he has woven material into this background so skilfully that the result is a unified whole. He has made extensive and intelligent use of newspaper and manuscript material, much of it in private collections; he has organized an unwieldy mass of facts, economic, social, and political, in a clear and logical narrative; and, what is more remarkable in a doctoral dissertation, he has demonstrated his possession of a good literary style and a sense of humor.

The first chapter sketches the political history of Georgia from 1872 to 1889, with special references to dissenting movements such as that connected with the grange. This is followed by a discussion of the underlying causes of agrarian discontent and an account of the efforts of the farmers to better the situation through organization; after which the story of campaigns and elections, platforms and legislation, is carried to its logical conclusion in the election of 1896. A final chapter estimates the abiding results of the Populist movement, notes its relation to later progressive movements, and points out that many of the specific ills of which the farmers complained have been remedied. The author believes, nevertheless, that "fundamental problems with which the Populists were concerned have not been solved," and that, "in so far as the advocates of change in the United States are still liberal and progressive rather than radical, they are aiming in the same general direction as were the Populists."

The book concludes with an excellent bibliography, in which the mass of material both general and Georgian is classified and appraised.

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Unfortunately no index has been provided and the proof-reading has been carelessly done. It would seem that Columbia University ought to be able to avoid such defects in its publications.

SOLON J. BUCK.

University of Minnesota.

Municipal Government and Administration. By WILLIAM BENNETT MUNRO. (New York: The Macmillan Company. 1923. 2 vols. Pp. xii, 459; vi, 517.)

Early last autumn the present reviewer received a letter from a professor in a foreign university inquiring if Munro's *Government of American Cities* was still the standard work on municipal government in the United States. He replied that it was no longer; that the enviable position which it had occupied had been seized by a new book called *Municipal Government and Administration,* which was to date the most complete general work upon city government in this country and which would doubtless remain a leading authority for years to come.

This newer work is much more than a reprinting of the author's earlier books on municipal government and administration. While it was inevitable that certain subjects would be treated in a manner similar to the older works, the later work exhibits an individual freshness which is extremely pleasing.

The first volume is devoted to the history, law and politics of municipalities; the second to the administration of municipal services. Although some attention is paid to European history and practice, the burden of the book relates to the United States where the past twenty years have seen great activity in charter innovations and administrative experimentation. Accordingly the time has come when some of the newer devices, such as commission government, can be appraised, and in so doing Professor Munro distributes praise and blame with an impartial hand. Because of the limited data available this has been a difficult service, and if we are at times disposed to disagree with him we are reminded that much necessary evidence is lacking. A great deal must be done in collecting and classifying the great mass of undigested material before the operation of our municipal institutions can be demonstrated beyond dispute.

In the second volume the author has undertaken the courageous task of explaining and evaluating the whole chain of municipal services, including a number of topics not covered in his earlier book on municipal administration. It is a courageous task because such matters

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as water supply, police and fire protection, public lighting, city planning and municipal finance are apt to be considered dry subjects. Furthermore, each one affords a life work for any number of specialists, and specialists are often opinionated persons eager to criticize. But the student and general reader will find these subjects treated in a style illuminating and engaging, and the specialist will find no misstatement of fact, although all the conclusions may not please him. To be an effective citizen these days one must know something about the problem of the city and it is toward such knowledge that the present book contributes. With this in mind, we have tried out volume two on both the general reader and the college student, and the results have been gratifying. Professor Munro is no eulogist of American city government. It is still, to his mind, a rather conspicuous failure. For example, he states that it is everywhere conceded that municipal employees display less alacrity and give less value for their wages than do those engaged by private corporations. American cities, he concludes, do not get more than sixty cents on the dollar for their payroll expenditures. He is extremely distrustful of municipal ownership and operation of public utilities, believing that the successful experience of European municipalities, with their greater administrative efficiency, can not yet be duplicated in this country.

Personally, we are more hopeful. We feel that an exhaustive and dispassionate comparison of the management of many of our cities with that of private industry (making due allowance for the varying job conditions) would be quite favorable to the municipalities. American business corporations have been wasteful, their leaders have at times proven corrupt, nepotism and politics have influenced them as well as our municipal officials. This has been particularly true of those utilities which have been brought under public regulation. True, our cities have not taken front rank in invention and the promotion of new enterprises, but in the past this has not been considered the business of government. Is there not evidence that our cities are preparing themselves to become acceptable operators of large public services, the control of which should reside in the community at large? Have not the past twenty-five years shown sufficient progress in municipal administration to free us from our inherited inferiority complex with respect to municipal efficiency? Our demands upon the city are becoming more and more severe, slovenly administration is beginning to reap its political reward, and the lines along which improvement is to proceed have been indicated. Without closing our eyes to the

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manifest shortcomings of our present government, we can find much to encourage us for the future.

For the student who wishes to pursue further his study of municipal government, the references at the end of each chapter of the present work will be valuable. To the book's other merits has been added the quality of good style and readableness, a precious virtue in these days of so much careless workmanship. In a word, Professor Munro has given us an authoritative work which will be widely read, and which will be studied with great satisfaction.

H. W. DODDS.

New York City.

Regulation and the Management of Public Utilities. By CHARLES STILLMAN MORGAN. (Boston and New York: Houghton Mifflin Company. 1923. Pp. xi, 362.)

The Hart, Schaffner & Marx series of prize essays already includes several valuable contributions to the study of the problem of urban public utilities, including Hartman's *Fair Value*, and Lincoln's *Results of Municipal Electric Lighting in Massachusetts*. It is the aim of the present volume to develop a definite thesis. Public regulation of utilities is assumed to be practically inevitable. Indeed, governments tend today to thrust their hands deeper and deeper into corporate affairs which were once considered entirely private, such as service, finance, accounting, labor relations, and even the details of management. At the same time public regulation practically makes the government a partner in the business, with the result that corporate income is more secure than ever before. Capital is well protected, but there is left little room and little incentive for private initiative. Management as such receives practically no reward for efficiency, and there is not enough genuine competition in the public utility field to force the companies to make their greatest efforts towards reducing costs and rates, and improving service. The result is a tendency to inefficiency, and this inefficiency tends to persist. It becomes, therefore, an important problem to establish conditions which will revive the flagging zeal of management, so that it will give its best service to the public.

The author analyzes the sliding-scale method, the "service-at-cost" plan, and other schemes, all of which he finds to be unsatisfactory solutions of the problem. On the other hand the state public utility commissions are found to be doing very little highly constructive work

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in the promotion of efficient management. Practically all of the efforts along this line give an additional reward to capital, which deserves none, and practically no reward to management, which alone can increase efficiency. It is the author's conclusion that ultimately the return to capital should be practically guaranteed by the state, while management should receive a separate remuneration dependent upon efficiency. In this connection it will be necessary to establish definite standards of efficiency by which management may be tested, as well as rewards which will follow good service. The author does not neglect to mention even such nonpecuniary rewards as public esteem and prizes.

There is no reason to quarrel with the thesis so well set forth by the author. There can be little question as to the desirability of exploring every possible means of making public utility management more efficient. At the same time it must be admitted that the practical proposals put forward, up to the present time, make but short and halting steps in the direction of the desired goal. And what is the goal? If capital is to be guaranteed its return, and management is to receive rewards at the hands of the public, is it a far cry to public ownership and operation? Some portions of the book under review sound like proposals for increasing the efficiency of the civil service.

WILLIAM ANDERSON.

University of Minnesota.

The Irresistible Movement of Democracy. By JOHN SIMPSON PENMAN. (New York: The Macmillan Company. 1923. Pp.xii, 729.)

This volume raises issues larger than those contemplated by the author. It is difficult enough to undertake to interpret the history of the United States, and of France and Great Britain during the same period, in terms of "democracy;" but to attempt in addition to show that this "democracy" has been the subject of an "irresistible movement" opens a wide field for criticism. While the author disclaims the suggestion that he has any "special theory to sustain, or thesis to prove," he subscribes, nevertheless, to a belief in the inherent force of the demand for democracy and in its steady progress toward its goal despite the efforts of individuals and governments opposed to it.

The framework of the volume consists in an historical study of the progress of democracy in the three countries which have contributed most to its development in modern times. The several surveys are on the whole well carried out, and while they omit the details which

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belong to an historical treatise they are both instructive and readable, although suited to the general public rather than to the student. The quotations from bibliographies and from public addresses of leading statesmen give force to the narrative, and put the issues involved in a clearer light. Controversial questions are presented with impartiality, and there is no desire to hide the faults of democracy or the incidental wrongs of which it has at times been guilty. Despite its errors the author sees in democracy the protection of the country, on the one hand against the rule of a privileged class, and, on the other hand, against the excesses of socialism in its various forms. The hope of the future, he believes, lies in the determination of democracy to secure a government which expresses the rule of all the people for the general welfare.

Whether or not the reader agrees that democracy is pursuing its irresistible way despite what men may do to thwart it, whether the motives alleged by political parties and their leaders have always conformed to the ideal of democracy proclaimed by them, whether the expression of the will of the majority has at all times coincided with justice to the minority and with the welfare of the community as a whole, are questions upon which there is room for a wide difference of opinion. It will be agreed, however, that the author has done a good service in stimulating public discussion of the problems which lie at the root of popular government.

C. G. FENWICK.

Bryn Mawr College.

The Development of International Law After the World War. By OTFRIED NIPPOLD, translated from the German by AMOS S. HERSHEY. (New York: Oxford University Press. 1923. Pp. xv, 241.)

In his introduction, Nippold says. "It is a fact that war is not a legal institution, but simply the application of force. War is struggle, employment of force, and in so far as it is to serve the enforcement of claims, it is self-help." He says he wishes the "cleanest possible distinction between international law and the law of war," and regards the great problem as that of "the creation of a system of international judicature." International arbitration would be one phase of this system. He realizes the need of sanction for international law and also the possible necessity of some rule other than that of unanimity in international conferences. He has come to believe that coercive measures may be devised and says "I confess that the conviction of the necessity

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of such coercive measures was virtually wrung from me, so opposed is it to my whole former conception of international law." The "real guarantees" of a juridical nature may be possible when the solidarity of international law is more fully attained. This may be based upon the recognition of a moral unity of nations.

In relation to war, a new neutrality may be necessary, which shall be active rather than passive and imply a united application of force to compel the disputants to settle differences by other methods than war. "A war to end war," "the outlawry of war," form the proper objects of a union of states, or of a league of peace.

In considering the laws of war, Nippold says the conduct of war "is dependent upon the necessities of the war and nothing else," and legal regulation has only an intermediate application. He recognizes that the old idea that war is military and between the armed forces is becoming obsolete, and that war is becoming a contest between the industries and the peoples. In this respect he sees the views of Bloch in many respects confirmed.

Referring to submarines, he says that "certainly the law must not put chains upon the waging of war." . . . . "Surely no one would desire to make the new law synonymous with terror" "International law should not be converted into a medley for concealment of political efforts."

In a somewhat full discussion of recent opinion of "freedom of the seas," it is shown that the expression is indefinite, and in time of war, "taking the right of naval warfare for granted," he asks "just how much limitation of the freedom of the seas is to be recognized by neutrals?"

Nippold considers that democracy and international law are two conceptions that must be complementary to each other and to a certain degree also conditioned upon each other; for the international idea can only prosper fully in the soil of democracy," and concludes that "upon the progress of law and not of force must the future of Europe and of the world be established."

There are nearly fifty pages of appendix, but, unfortunately, no index, an omission which lessens the usefulness of a very suggestive book, the spirit of which has been preserved to a remarkable degree in Professor Hershey's translation.

GEORGE GRAFTON WILSON.

Harvard University.

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Turkey, The Great Powers and the Bagdad Railway: A Study in Imperialism. By EDWARD MEADE EARLE. (New York: The Macmillan Company. 1923. Pp. ix, 364.)

The Bagdad Railway, the author rightly states, is probably the most important single factor in the history of Turkey during the last thirty eventful years. The principal objects to be served by that railway, economic and strategic, are characterized and revealed by the statements of its advocates. Each European state, also, that one time or another has been interested in its development positively or negatively, has its interests analyzed, dissected, its policy criticized, and the selfishness and sordidness contained in that policy thoroughly exposed. In this respect no great European state has been spared. In pinning the indictment for selfish imperialism on a state, Professor Earle's spear knows no brother,—French or German, English or American, it is all the same.

One is inclined to give Professor Earle credit for a careful analysis of his material, in collecting which he has wandered extensively and to commend his outline as decidedly helpful to the reader who desires to understand the subject. There is quite a human touch to the headings, "Ancient Trade Route Revived," "Beggared Turkey Invites Economic Exploitation;" later his "Penetration Progresses" is an apt alliteration. We note the allusive title to chapter XI, "Turkey Crushed to Earth Rises Again." Other significant captions are "Bagdad Railway Becomes an Imperial Enterprise," "Russia Resists and France is Uncertain," "Great Britain Blocks the Way," "Bargains are Struck," and finally "The Struggle for Bagdad Railways is Resumed" (in which the Chester concessions are discussed).

Two most interesting sections describe the Turkish recovery after the crushing defeat in the World War, and the outburst of nationalism by which that recovery was inspired. Yet what would Sir Charles Eliot say about the new republican government, its character or its permanency? Scepticism is permissible, also, in regard to any long abstinence by Russia from interference in the affairs of Asia Minor, although Anglo-French rivalry has supplanted the Franco-German or Russo-German competition.

The book does aim apparently to leave a good impression concerning the acts of the Turkish government. References to Armenia and Syria, are conspicuously few. Lord Morley is quoted (p. 208) "You can not get over this plain cardinal fact, that this railroad is made on Turkish territory." "It is not our soil, it is Turkish soil, and the Germans are

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there because the Turkish government has given them the right to be there." Is the railroad on Turkish soil only? Other dwellers between Brusa and Bagdad than the Turkish conquerors might well be considered. While castigating the imperialism of the European powers, could not Professor Earle have said a word about "Turkish imperialism?" In the Arab sections of the Ottoman empire, have not Arab rights been exploited by the Turk as much as they ever were, or are likely to be, by the European?

It is patent to all observers in the Near East from Belgrade to Bagdad that to trade with America is safest and surely is best if the Americans will let it be done on reasonable terms; "the Americans have no political axe to grind." In the words of Fouard Bey, "It [American coöperation] is a form of co-operation designed to benefit both America and Turkey and not to invade Turkish sovereignty and Turkish political interests in any way. That is why we prefer American co-operation." (pp. 343–344).

Not many errors of importance have been detected either in the text or in the notes. The spelling of *Vambery*, however, appears rather original (p. 24). Of course it is not easy to verify all the references, as many are taken from reports not easily accessible or from periodicals and newspapers not found on this side of the Atlantic. One might criticize the citation of W. S. Monroe and Lothrop Stoddard, whose books are sympathetic but hardly final as authorities.

Maps of Turkish railways in 1918 and of the Chester concessions are inserted. The references and notes are full and informative, scholarly and critical. They are gathered together at the end of each chapter, an arrangement possibly not possessing the maximum of convenience for the reader. The index, however, is only fair.

ARTHUR I. ANDREWS.

Tufts College.

Aarbog for de Nordiske Interparlamentariske Grupper. Fjerde Aargang, 1921. Ved A. LAUESGAARD, Sekretar for den Danske Gruppe. (København: Den Danske Interparlamentariske Gruppe. 1922. Pp. 157.)

Årsbok för de Nordiska Interparlamentariska Grupperna. Femte Årgången, 1922. Utgiven av P. WIDEGREN, Gruppens Sekreterare. (Stockholm: Rigsdagens Interparlamentariska Grupp. 1923. Pp. 45 + 31 + 167 + 41 + 67.)

Organized in 1912, the Northern Group of the Interparliamentary Union (composed of the national groups of Denmark, Norway, and

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Sweden) has been active under the brilliant leadership of such men as Hjalmar Branting, Dr. Lange, Dr. Hagerup, Gunnar Knudsen, L. Moltesen, and C. Zahle. It has held fourteen regular conferences, at which there have been illuminating discussions and important conclusions with respect to various aspects of international life, such as the League of Nations, disarmament, protection of minorities, the International Labor Organization, and the economic reconstruction of Europe.

This Northern Group began in 1918 the publication of a regular series of bulletins now appearing monthly, edited in turn by each of the groups composing the combined Northern Group, and therefore published intermittently at Copenhagen, Christiania, and Stockholm. These bulletins are rich in useful material, containing (1) information and announcements with respect to the Interparliamentary Union and the activities of the Northern Group; (2) reviews of legislation in each of the three Scandinavian countries; (3) occasional articles on subjects of international importance; (4) news and miscellaneous matters of interest.

In 1918 the Northern Group began also the joint publication of an annual year-book of which the books under review are the fourth and fifth. These year-books, like the bulletins, are also edited in turn by each of the national groups, the first (1918) by the Danish Group, the second (1919) by the Swedish, the third (1920) by the Norwegian, and so on. Of the two under review, the *Aarbog* for 1921, edited by the Danish Group, is the more valuable in that it contains material other than that already published in the bulletins for the year. Among the contents may be noted the following as of special interest: (1) reports of the activities of each of the three national groups, with a list of members and officers, (2) a summary review of the legislation of each country during the current year, (3) a discussion of the problems of self-determination and protection of minorities by Dr. Knud Berlin, and (4) as an appendix, a complete report of the thirteenth regular meeting of the Northern Group at Copenhagen in July, 1921.

The Swedish Group, in editing the latest of these year-books, was handicapped by the necessity for economy, hence the *Årsbok* for 1922 is merely a collection of the bulletins published during the year. These contain much that is of permanent value. One finds in this volume reports of the Interparliamentary Conferences at Stockholm (August, 1921), Basel (April, 1922), and Vienna (August, 1922), together with the text (in Swedish) of the resolutions adopted; complete reports of

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the meetings of the Northern Group held during the year; the reports of the secretaries of each of the three separate groups; and again a review of the year's legislation in each country. The volume has a table of contents, and an excellent index is appended.

These year-books serve as a reliable guide to the reactions of the Scandinavian countries to recent international problems; but they are also useful as valuable sources of information with respect to the work of the Interparliamentary Union in particular, and of international coöperation of all kinds in general.

CLARENCE A. BERDAHL.

University of Illinois.

America and the Atlantic. By VICE-ADMIRAL G. A. BALLARD. (New York: E. P. Dutton and Company. 1923. Pp. vii, 351.)

In a leisurely but always interesting manner the author leads his reader down the long path of maritime adventure for control of the new world from Columbus to Sampson. By accounts of naval, military, and diplomatic policies and events he shows how Spanish, Dutch and French claims in North America gradually disappeared as a consequence of British sea power. But while a dependent overseas colony can be controlled by sea power alone this is not true of a self-sustaining dominion. Sea control was the key to British dominion of Virginia in 1588, of New York in 1666 and of Canada in 1763; but it could not keep Brazil for the Netherlands in 1640 (p. 99), the thirteen colonies for Britain in 1776, or the South American colonies for Spain in 1820. The strong position of a self-sustaining overseas power, if defended by even a moderate naval force, is emphasized. Thus we are told if the Incas "had only been gifted with the very limited degree of nautical genius necessary for the building of a North Sea herring ketch, and had possessed a dozen such boats with armed crews, this fabulously wealthy and numerous people might have postponed their national extinction for generations" (p. 33). The author, differing from Mahan, thinks the result of the American revolution inevitable in spite of British sea control. French maritime aid, long delayed because of French desire to prolong the war until she had gained advantages over her traditional enemy in other parts of the world, was not of decisive importance. Economic self-sufficiency likewise predetermined the result of the South American revolt.

Vice Admiral Ballard is a good Englishman. The Nordic race is superior in maritime fighting qualities to the Latin (p. 275) and the

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Anglo-Saxon branch of that race is the best of all (p. 281). The Americans have unfortunately declined in this capacity through race mixture. (p. 348). In magnanimity, some Americans may be surprised to learn, Japan shares honors with the Anglo-Saxons. "It remains a recorded fact in history that having the power to hold, she (Great Britain), nevertheless gave back, with the assent of her ruler and the majority of her people. The United States have on occasion done the same; so has Japan; but never France, Spain, Germany or Holland." (pp. 199–200). France, we are informed, is a believer in the "policy of frightfulness" (p. 188), which belief is only hinted at for Germany (p. 299).

There are occasional lapses in statements of fact. Florida was not ceded to France with Louisiana in 1798 (p. 282). Germany was not alone in the indiscriminate use of mines during the world war (p. 299). The French-Mexican and Spanish-American were not the only wars of European against American powers after Latin-American independence (p. 336). The Spanish attack on Chile in 1866 surely belongs in this category if not the German-Italian-British blockade of Venezuela in 1902.

Perhaps the absence of meticulous scholarship and of careful objectivity does not greatly concern the author. He sought to trace the consequences of the major naval events on European-American relations "with the qualification of forty-five years service as a naval officer and with no other." (p. vi). This he has done. Bearing in mind what the book purports to be, the reader will find in it much interesting information so arranged as to stimulate thought.

QUINCY WRIGHT.

University of Chicago.

One Hundred Years of the Monroe Doctrine. By D. Y. THOMAS. (New York: The Macmillan Company. 1923. Pp. xii, 580.)

The peculiar veneration paid to Monroe's declaration renders timely this study. The evolution of the doctrine is a study in political psychology as well as in critical documentation. Professor Thomas has given the essential facts relating to the doctrine, and he has not overlooked its popular significance as illustrated in Cleveland's reliance on it in the Venezuelan controversy.

Evidently, Professor Thomas is little concerned with the "Personal Genesis of the Monroe Doctrine" but is mainly concerned with the doctrine as related to events in the first quarter of the twentieth century.

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In twenty-two chapters he discusses the bearings of the doctrine. The objections of Europe and of Latin-America are analyzed with care. He has given special attention to the doctrine as related to economic imperialism. Five chapters deal with "dollar diplomacy," in Santo Domingo, Haiti, Central America, Mexico, and in the struggle for oil. The activities of Mr. Doheny are traced as far back as 1900. In the discussion of events since 1914 he has written a history of foreign policy. The reader is likely to conclude that the Monroe Doctrine is necessarily involved in every phase of our foreign policy, when the facts seem to be that it is involved only when statesman and politicians make it a special issue as they did in the debate on the Versailles Treaty.

In reviewing the history of the doctrine, Professor Thomas asserts that the noncolonization feature has been fairly well enforced. The pledge of nonparticipation in European political conferences was kept until the Moroccan Conference of 1880. The Samoan agreement proved to be an uncertain "entanglement." The pledge that we would leave the Latin-American states to themselves has been severely strained in Santo Domingo. In the matter of collecting claims there has been considerable change.

The author has some questions for Secretary Hughes. He does not see how the Hughes doctrine of "Independence, not of isolation" is to be carried out by any nation not a friend of international anarchy, for in spite of refusal to ratify the League, the United States has not withdrawn from participation in world politics. As for the future, he believes that if the nations are to go on in the old way the Monroe Doctrine will become a synonym for economic imperialism. That would, however, be contrary to the American spirit. But if there is to develop a sentiment of international solidarity, replacing the detestable jealousies and rivalries, then the doctrine may become, as Woodrow Wilson proposed, the guiding principle of the nations of the earth.

GUY V. PRICE.

The College of Emporia, Kansas.

The Revolutionary Idea in France, 1789–1871. By GODFREY ELTON. (New York, Longmans, Green and Co. 1923. Pp. vi, 191.)

For Dean Elton the revolution was a natural and almost inevitable transformation of French society which began long before the meeting of the states general, was little influenced by the personnel of its leadership at any particular moment, and came to an end only in 1830 when its essential features, which he designates as order and equality, that is,

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the establishment of a highly efficient strongly centralized administration and the abolition of feudalism, had been so fully secured that they were able to maintain themselves against all the assaults of the new socialistic revolution in 1848 and 1871.

Dean Elton's book is an interpretative essay. It gives in brief, simple, and direct fashion his conception of what the revolution really was, but does not attempt, except in an incidental way, to set forth the evidence upon which the argument rests. In the judgment of the reviewer this is, in the main, sound, and an admirable antidote for the foolish sentimentalism and lack of common sense which mark Mrs. Webster's book on the *French Revolution*. (See this REVIEW, vol. xiv, 732.)

FRANK MALOY ANDERSON.

Dartmouth College.

Catholicism and the Second French Republic, 1848–1852. By Ross WILLIAM COLLINS, Ph.D. (New York: Longmans, Green and Co. 1923. Pp. 360.)

The revolutionary upheaval of 1848, which came "like a fire-bell in the night" to awaken bourgeois society to the problems and dangers of the new industrial age, proved to be one of the decisive turning-points in the evolution of modern France. Among the forces that shaped public opinion during the ensuing four-years' crisis, not the least important was that of reviving Catholicism, then represented by such illustrious figures as Montalembert, Lacordaire, Ozanam, the Vicomte de Melun, Bishop Dupanloup, Berryer, and Louis Veuillot. Dr. Collins has, therefore, chosen a very interesting subject for a monograph, and he has treated it in thoroughly competent fashion, with admirable fairness and objectivity. His work is based, not only upon a fairly exhaustive study of the printed materials, including the Catholic periodicals of the time, but also upon the British diplomatic correspondence from Paris of 1848–49, and on some researches in the *Archives nationales*.

The author has concentrated his attention chiefly upon the earlier part of the period in question: Upon the religious renaissance in France after 1830 and the rise of the liberal Catholic school; the rallying of the Catholics in 1848 to democracy and the republic; the various projects put forth from the Catholic side for settling the gravest problems of the time—the relief of the working class and the reorganization of industry (this is perhaps the most interesting part of the volume); the reaction against Socialism after the "June days" of 1848; the Roman expedition;

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the Falloux education act; and the attitude of the Catholics toward the rising star, Louis Napoleon. One may, perhaps, regret that the events of 1850–52 are treated so hurriedly; that the author had adopted what seems to be an unnecessarily harsh and one-sided view of Napoleon III; and that some careless errors have crept in, for example, the title of d'Azeglio's famous book is given as "Degli ultima Casa (!) di Romagna" (p. 145), and Mme. D'Agoult is invariably referred to solely under her literary pseudonym of "Daniel Stern." But these defects do not very seriously detract from the merits of a volume, which in large measure does for the religious history of the Second Republic what M. Pierre de la Gorce is so admirably doing for that of the First.

ROBERT H. LORD.

Harvard University.

The Colonial Policy of William III in America and the West Indies. By G. H. GUTTRIDGE. (Cambridge, England. Cambridge University Press. 1922. Pp. viii, 189.)

This monograph, the Prince Consort Prize Essay for 1922, is presented as an examination of the effect of the Revolution of 1688 on British colonial development, and of the "general trend of progress in colonial relations during the period" 1689–1702. From the title, the arrangement of the contents, and the preface, one is led to expect a discussion of policy. But Mr. Guttridge has stopped one stage too soon, and has merely given material on which such a discussion might have been based. He gives no evidence that William III took any interest in American affairs. The king is hardly mentioned in the book. And the colonial policy of William's reign, which was the policy of the lords of trade, was not unchanged from the policy of previous reigns. Indeed Mr. Guttridge has simply written an account of one of the less known periods of American colonial history, emphasizing particularly the working of the already existent colonial policy under somewhat new conditions, those arising from the revolution of 1688.

The general conclusions of the author are quickly summed up. He considers the conflict between the more popular basis of the new government at home and the increasing need of administrative control over the colonial governments to be the great problem of colonial policy after 1688. In the events of the colonial revolutions of 1689 he sees an example of this conflict. Another example is the struggle with France, which followed as another result of the revolution in England, and which he recounts at some length. The war, he shows, necessitated closer

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supervision of affairs from England, but the greater strength of the popular principle, even in the colonial governments, made it easier for the colonists to resist control.

For the most part the book is pure narration. It is based almost entirely on the colonial state papers. The reader who looks for interpretation of facts will get little satisfaction. He who is satisfied with the facts alone is in better case; he who demands accuracy in minute details will not infrequently be annoyed, as at the repeated "Senectady," or at the suggestion that Sir Charles Wheler commanded his son, Sir Francis's, fleet.

E. P. CHASE.

Wesleyan University.

BRIEFER NOTICES

A Study in International Government, by Jessie Wallace Hughan, Ph.D., (Crowell, pp. 401), is apparently the work of a social psychologist. At any rate the position is taken that the work of statesmen and jurists is "nearly completed" in international government, and that its basic problems "lie in the field of social psychology. . . . It is the desire for International Government, rather than its institutions, that has hitherto failed." The book inquires into the history and the legislative, judicial, and executive branches of international institutions; it discusses the relation of the League of Nations to nationalism, internationalism, and imperialism. The book is disorganized; it abounds with quotations from current magazines; and it pays little attention to original sources. A little more than one page is given to the World Court (p. 183). Nothing is said about the constitutional aspects of the League of Nations Covenant, nor the extremely important, constitutional developments which the League has undergone since its establishment. The book contains a number of errors, such as the following: The communities in mandated territories have no method of protesting to the League (p. 226); an amendment to Article 16 of the Covenant was approved in 1921 (p. 174 n); the Second International met in 1919 at Berlin (instead of Bern (p. 143)); the Covenant of the League may be amended merely by a majority of the states who have representatives in the Assembly (p. 381); the Senate has failed to sanction Harding's proposal in regard to the world court (p. 185). Nearly a hundred pages are given over to the "biology" and the "psychology" of international government.

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There is nothing of pacificism in *The Reformation of War* by Col. J. F. C. Fuller, D.S.O. (E. P. Dutton and Company, pp. xv, 287). "They rejoyse and avaunt themselves, if they vanquishe and oppresse their enemies by craft and deceite. For with bodily strength (say they) beares, lions, boores, wulfes, dogges, and other wild beasts do fight. And as the most part of them do passe us in strength and fierce courage, so in wit and reason we be much stronger than they all. . . . Engines for warre they devyse and invent wonders wittelye." These methods of the Utopians comprise Col. Fuller's program for the reformation of war. He commends direct attack on the morale of the enemy through terrorization of the civilian population by anesthetic, lachrimatory, laxative, laughing and, if necessary, lethal gases deposited by aircraft, instigation of treachery among the enemy, and sudden investment of his cities by amphibious tanks ferried overseas in submarines. In short, he believes that the "moral shock" (p. 104) through the application of inventiveness, capital and reason rather than by destruction of the enemy's armies by infantry masses will be the military objective of the future, and that it will make wars shorter and more bloodless, until eventually, they may be decided on a chessboard (p. 278). The author considers war inevitable and a necessary condition of progress. But though his invectives against pacificism and sentimentalism are severe, they hardly exceed in severity those against the traditionalism which has usually governed the military mind. "In their conservatism and lethargy," he writes, "armies are indeed extraordinary organizations. Browsing through peace time, like human cattle they are slaughtered during war." The author has little sympathy for the League of Nations and less for limitation of armament and laws of war. Rather, he thinks, "Preparation for war or against war from the grand strategical aspect is the main problem of peace" (p. 215).

The concluding volume of *The Cambridge History of British Foreign Policy* edited by Sir A. W. Ward and G. P. Gooch (Macmillan, pp. 664) has much the same merits and defects as its predecessors. The volume contains eight chapters, of which the most interesting are the two last, by Mr. Gooch on The War and the Peace, and by Mr. Algernon Cecil of New College, Oxford, upon The Foreign Office. Mr. Gooch makes some caustic criticisms of the peace of Versailles and its negotiators, and pleads for the League of Nations. Mr. Cecil writes with ease and quiet humour about changes in the internal adminis-

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tration of the office, the characteristics of secretaries of state and of permanent officials, the relations between clerks and diplomats, the control of the foreign office by Eton and Oxford, and the high tradition of dignity and of official reticence, which is the envy and the despair of more democratic nations. He gives us the spirit of British foreign policy and the atmosphere in which it has moved, in a way denied to the laborious compendia of facts produced by some of his colleagues.

Great Britain and Prussia in the Eighteenth Century, by Sir Richard Lodge (Oxford University Press, pp. x, 221) includes an introductory lecture covering the period from 1688 to 1740, followed by five others which deal more in detail with the years from 1740 to 1791. To the student of political science, the difficulties confronting British foreign policy as a result of the "personal union" with Hanover are of special interest. Much new light from documentary sources is thrown on the intricate diplomacy of these years, especially upon the careers of several Lowland Scots who represented Great Britain at the Prussian court. Professor Lodge deplores the Prussian hero-worship of Frederick the Great, "which Carlyle adopted and expounded to this country," but admits that he was the equal of Pitt "in stubborn courage, supreme self-confidence, and genuine devotion" to the interests of his state.

Three volumes containing the *Prize Cases Decided in the United States Supreme Court, 1789–1918* (Oxford at the Clarendon Press, pp. xxxii, 2182) have been published under the supervision of James Brown Scott with the assistance of Henry G. Crocker, both of the Carnegie Endowment for International Peace. There is a brief introduction showing the development of prize jurisdiction in the courts of the United States. The pagination of the original reports is indicated, thus making citation and comparison easy. The cases are also printed in full, which greatly adds to the value of the collection as compared with many collections where the editor assumes that he is able to decide what parts of a case may be essential and omits the remainder. There is an excellent index of 43 pages which completes the volumes. These volumes are very serviceable in facilitating reference and making unnecessary the previous handling of the Supreme Court reports, from which the cases printed were taken.

Teachers of international law are frequently balked in their attempts to discuss documents of current interest by inability to secure ample

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texts in sufficient number. Professor J. E. Harley in *Selected Documents for the Study of International Law* (Times-Mirror Press, pp. 407) puts at the teacher's disposal the means of overcoming this obstacle. The volume contains texts in full of the more important post-war international documents of lesser bulk, from the Fourteen Points to the Washington treaties. Introductory chapters indicate briefly the growth of international coöperation and treat at length the proceedings of the Conference on the Limitation of Armaments.

Dr. Julius Goebel, in *The Equality of States* (Columbia University Press, pp. 89), reprints three papers from the *Columbia Law Review*, aiming critical shafts at a book of the same title by Professor E. D. Dickinson. Dr. Goebel attacks the earlier book on its treatment of the historical and philosophical background of the doctrine of equality, chiefly prior to Grotius; a phase of the subject which Professor Dickinson seems to have neglected in his desire to focus attention on practical modern manifestations. Dr. Goebel in rather cumbersome style reveals a mass of valuable documentation. Professor Dickinson's review of the book in the *Harvard Law Review* for January, 1924 is in the nature of a reply to the criticism.

The Life of *Jefferson Davis: President of the South* (Macmillan, pp. 371) by H. J. Eckenrode, is written with a point of view radically different from other books and biographies dealing with the leaders of the Civil War. He expresses the opinion that the Civil War was due to the modification in economic and social life and political ideas of the original Nordic stock, brought about by the Southern climate. "With these divergences" writes the author, "it is not to be wondered at that a rift appeared between the original Nordic race, as it was in the North, and the tropicized Nordics of the South which led to great consequences. This change in the Nordic race—this new development in the hot lands of America, unhampered by European restraints—is the main cause of the Civil War. . . . The chief result of the Civil War was the ruin it brought on the Nordic race in America. . . . . The victory of the North meant the predominance of the non-Nordic elements in American life. It meant the freeing of the slave, the trampling of agriculture by industrialism, the rise of labor to be a great power, the overthrow of individualism. This combination should teach us the good and evil on both sides in the Civil War." The Nordic population of the South was decimated: the best of a generation was

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destroyed. The Southern Confederacy was above all the effort of the Nordic race to raise itself. Success depended on Jefferson Davis, who failed, not for lack of brains and not from want of character, but from temperament, and with him faded the last hope of the Nordic race. The author, however, devotes only a few chapters to emphasizing his application of "anthropological science to American history" and the bulk of the book is an interesting narrative of the life of Jefferson Davis.

Professor Coleman Phillipson's newest book, *Three Criminal Law Reformers: Beccaria, Bentham, Romilly* (Dutton, pp. 360) consists of three essays or studies, which taken together are meant to present a connected history of the great germinal period of criminal law reform. Each study is devoted to one of the three reformers and is schematically arranged to treat his life, the nature and problems of the age in which he worked, his theories and writings in the field of criminal law and penology, and his influence and accomplishments. The schematic arrangement is responsible for a certain amount of unnecessary repetition which makes the book slighter in content than its bulk would indicate. The summaries of the doctrines of the three writers are convenient, and the brief biographies of Beccaria and Romilly supply a need. Attention may also be called to the discussion of the early history of the "greatest happiness" principle (p. 157, 180); to the statement of Bentham's views on "indirect methods of preventing offences" (pp. 217–226); and to the appreciation of Romilly's character and services (pp. 320–332). In general, the author hazards little of constructive suggestion or interpretation and the book does not display wide acquaintance with the period, outside of the writings of the three reformers treated.

The LaSalle Extension University has issued, in its series of business books, a little volume by Frank H. Childs on *Where and How to Find the Law* (pp. 119). The book contains a wealth of accurate information concerning quick ways of laying one's hand upon constitutions, charters, treaties, statutes, ordinances and so on; it also deals fully with law reports, legal cyclopedias, digests, law textbooks, and citators. The very great usefulness of this little volume to political scientists as well as to lawyers will be obvious to anyone who glances through its pages.

The Growth of the City State, by William Reginald Halliday (Small, Maynard & Company, pp. 264), is a series of lectures on the constitu-

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tional history of ancient times. Beginning with an admirable discussion of geographic factors in relation to ancient cities, the author traces the growth of the city state and then devotes two excellent chapters to a narrative of constitutional development at Athens and Rome. The lectures are of a very erudite character, and each is followed by a discussion of the sources. These discussions are of great value to the serious student of ancient political institutions, and can be read with profit by any student who possesses even an outline knowledge of ancient history.

A translation of Max Beer's *Social Struggles in Antiquity* appeared in 1922 in London and is now republished in this county (Small, Maynard & Co., pp. 222). The title does not well describe the scope of the book, which is rather a discussion of communistic practices and theories in ancient times, and ends with an attempt to state the cause of the downfall of the Roman Empire. The author's knowledge of ancient history leaves something to be desired; but this is less important, since recorded facts become plastic in his hands (for example, p. 188).

Non-Violent Coercion: A Study in Social Pressure, by Clarence Marsh Case, (The Century Company, pp. 423), is an exhaustive study of the history of organized resistance by means of other than material force such as the boycott, nonparticipation and passive resistance. The author starts with the teachings of Confucius, Lao Tse, and Buddha, in the period before the birth of Christ, gives an account of the doctrine of passive resistance as treated by the various Christian sects such as the Anabaptists, the Mennonites, Quakers and other religious beliefs, discusses the peace sectarians and conscientious objectors during the World War, explains the development and importance of the industrial boycott and the nationalistic boycott, such as the attempted Irish boycott of English goods and Chinese boycott of the Japanese; and finally discusses the extraordinary noncoöperation movement which has developed in India under the leadership of Ghandi. The book closes with a chapter on the social significance of non-violent or social coercion.

The tribulations of *The Conscientious Objector in America* (Huebsch, pp. 299) have been vividly set forth in a volume by Norman Thomas, an author whose participation in anti-war activities makes him a logical chronicler in this field. The book is written without vindictiveness

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and with more objectivity than one might expect from an author whose personal convictions on the subject are so strong. Some of the figures which Mr. Thomas gives are interesting and significant. The total number of conscientious objectors in all the camps was less than 4000. Of these the great majority accepted some form of noncombatant service; only 450 were imprisoned. And this out of a total of 2,810,000 men!

Sociology and Political Theory by Harry Elmer Barnes (Knopf, pp. 260) is intended to acquaint the reader with the more significant and representative types of sociological doctrine in relation to the major problems of political science. Accordingly, there are chapters on such topics as the sociological classifications of the state and sociological theories of sovereignty. There are many footnote references to further materials, and an admirable bibliography is appended.

A. P. Newton's *Federal and Unified Constitutions* (Longmans, Green Company, pp. 441) is a collection of documents preceded by an historical introduction. The book contains not only the texts of various constitutions but many ancillary documents relating to them. The editor has inserted, because of their historical interest, some constitutions which had but a brief existence, including the constitution of the Confederate states. But why has he omitted the constitution of the Irish Free State, one of the most interesting of all?

Democracies of the East, by Professor R. Mukerjee of Lucknow University (London: P. S. King and Son), presents the subject in three parts: race and region in politics, sociology and politics, and eastern communalism and democracy. He discusses group organization as the basis of political control; he believes that the East need not pass through the stage of middle-class supremacy, as in England and France in the nineteenth century; and he finds the solution for the polyethnic masses of Eastern Asia in a more thorough decentralisation, with a more complex type of federalism than is known in the West.

Ordinance Power of the Japanese Emperor by Tomio Nakano, (Johns Hopkins, pp. xviii, 269) contains an exhaustive study of the Japanese constitution from a limited viewpoint and, as such, is a welcome contribution to our detailed knowledge of that instrument. The scope of the study is far wider than the title would suggest and much more interesting. In Chapter XI the author deals with the military power of

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the Emperor and explains at considerable length the constitutional basis of Japanese militarism. Other chapters of special interest are those on the Emperor's ordinance power to fix the administrative organization, the police ordinance power, and the power to suspend constitutional guaranties. Chapter XIV analyzes carefully the guaranties which exist in the Japanese constitution against unconstitutional and illegal use of the ordinance power. There is a bibliography, but no index to the book. The lack of an index is somewhat offset by a complete analytical table of contents.

Poultney Bigelow's *Japan and Her Colonies* (Longmans, pp. 276) deals more particularly with the author's sojourn in the Island of Formosa. The author was much impressed by the benevolence and success of Japanese rule in this colony. He also visited Manchuria, Korea, Shantung, and Saghalin, in all of which he found things to admire. The book is written in a chatty vein, with no dull pages in it. Mr. Bigelow has the knack of imparting much information and of giving his readers a series of clear impressions, without placing any undue strain upon their mental processes.

The selected readings on *Modern Chinese History* (Commercial Press, pp. xxxvii, 910) gathered by Dr. H. F. MacNair are almost exclusively from English and American sources, and present the Western, that is, Anglo-Saxon, view of China's foreign relations from Lord Macartney's embassy down to the Washington conference. The Chinese side of this 125 years of conflict, except for the Sino-Japanese relations of 1915, goes by default; nor is any use made of the valuable French literature on the Far East. With these limitations, Dr. McNair's work should be useful; many of his citations are from works which are only to be found in libraries which specialize on China.

Messrs. Doubleday, Page & Company announce Emma Goldman's *Disillusionment in Russia* as "an amazing story," which it unquestionably is. The book begins with a narration of what its author expected to find in the Soviet republic and then traces vividly, chapter by chapter, her awakening to the realities. Assuredly she did not find Russia a happy land, either for herself or for others. The most delicious thing in the book is the recital of the author's interview with Lenin. She complained that there was no freedom of speech in Russia. "Freedom of speech," replied the chief executive, "that is a bourgeois in-

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stitution." Miss Goldman writes with more restraint than one would expect of her, but the indictment of Bolshevism is severe enough.

Dr. Fridtjof Nansen's *Russia and Peace* (Macmillan, pp. 162) represents an endeavor to portray "without prejudice, passion or partisanship" the existing conditions in contemporary Russia. There are chapters on trade, industry, agriculture, education, and social problems. It is Dr. Nansen's belief that a resumption of normal relations between Russia and other countries is essential to the restoration of the European equilibrium.

Robert M. McBride & Company have published, in English translation, the second volume of Cécile Tornay's *Outlaw's Diary* (pp. 233). This volume gives a vivid description of affairs in Hungary during Bela Kun's brief dictatorship.

Mussolini as Revealed in his Political Speeches contains selected addresses of the Fascist leader during the past ten years, translated and edited by Bernardo Q. di San Severino (E. P. Dutton & Co., pp. 375). The selections include a few speeches before and during the war, but the body of the book is devoted to the period since 1919. A valuable feature is a prefatory note to each item.

Vol. cvi, Number 1, in the Studies in History, Economics, and Public Law, edited by the Faculty of Political Science of Columbia University, *Labor and Empire*, by Tingfu F. Tsiang (pp. 220), is a study of the reaction of British labor, mainly as represented in Parliament, to British Imperialism since 1880; it treats of problems of India, Africa, Ireland, general imperialistic movements, and the world war. The author concludes that the reaction of British labor, except possibly to the tariff question, has been anti-imperialistic, both in intent and in effect.

Two recent doctors' theses at the University of Pennsylvania deal with *Financial Control in the States*, by H. A. Barth, and *The Political Party as a Social Process*, by Viva Belle Boothe. The former is based on concentrated control of the budget and expenditures in the governor, and presents a series of forms for the exercise of routine control. The latter discusses first the origin and development of the two-party system in the United States; and follows with a sketch of third parties

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since the Civil War, based on the view that such parties have been the means by which political parties have been made to conform to changing economic and social environment.

Too Much Government, Too Much Taxation, by Charles Norman Fay (Doubleday, Page & Company, pp. 416) is a plea for a return to the Jeffersonian plan of government. The author contends that we are moving from democracy to bureaucracy, and he enumerates the mile-posts that we have already passed on that road. He deplores the government's attempts to "unscramble our massive industrial units." He criticizes our present methods in taxation, and vigorously advocates a federal sales tax.

Several lectures by W. H. Hadow, delivered at the University of Glasgow during 1922, have been published by the Clarendon Press under the title of *Citizenship* (pp. 240). The lectures cover a variety of subjects in a philosophic vein, particularly the nature of the state, concluding with one which deals interestingly with St. Augustine's *De Civitate Dei* and the placing of citizenship on a spiritual plane.

The Science of Governmental and Individual Life by Emmett D. Nichols (Christopher Publishing House, Boston, pp. 82) is a plea for giving more attention to the influence of divine law upon mundane matters.

Diplomatic Portraits by W. P. Cresson (Houghton, Mifflin Company, pp. 371) contains ten chapters of biography, particularly of those who were closely connected with the Holy Alliance and the Monroe Doctrine. Alexander I, Napoleon, Castlereagh, Tallyrand, Metternich, Chateaubriand, John Quincy Adams, and James Monroe are the major ones. The portraits are skillfully drawn and the book makes good reading.

Harold Stannard's volume on *The Fabric of Europe* (Knopf, pp. 260) is a historical survey of international relations during the era before the War, together with concluding chapters on the treaty and the covenant. The author displays a broad grasp of modern European history in all its phases, and writes with exemplary clearness.

Towards International Justice (Harcourt, Brace & Co., pp. 249) is a collection of essays by F. N. Keen, an English barrister. The essays

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deal mainly with the League of Nations and its subsidiary organs, but there is a good brief discussion of the development of international law.

The Government Printing Office has issued a volume of *International Law Documents* (pp. vi, 392) containing material relating to the Conference on the Limitation of Armament. The treaties relating to the Pacific and the Far East are also included.

The Study of International Politics, by C. K. Webster (Oxford University Press, pp. 310) contains the inaugural address given by the author at the University of Wales. The lecture embodies an admirable statement of the subject, and might well be elaborated into a much larger volume.

Dr. J. Franklin Jameson has edited a volume of illustrative documents relating to *Privateering and Piracy in the Colonial Period* (Macmillan, pp. 619). A very large amount of interesting and important material is brought together, most of it hitherto unprinted. The documents are supplied with explanatory footnotes which greatly enhance their value, and the whole volume (as might be expected) is a model of scholarly editing.

Dr. Charles A. Beard has put into a volume on *The Administration and Politics of Tokyo* (Macmillan, pp. 187) the gist of a survey which he made for the authorities of the Japanese capital, also the recommendations which he submitted. After a general explanation of the frame of city government in Tokyo, there is a more detailed consideration of the various administrative problems. Dr. Beard applies to each of the more important municipal departments the criteria devised by the New York Bureau of Municipal Research. Every student of municipal administration will find this an interesting book. It was sent to the press, however, before the occurrence of the earthquake and hence does not deal with the present reconstruction program.

The Bureau of Municipal Research of Philadelphia has recently completed a survey of one of the semi-urban townships adjoining Philadelphia, the results of which are set forth in *The Government of Lower Merion Township, Pennsylvania* (pp. 370). Although the survey is primarily of local interest, the chapters devoted to such topics as finance and accounting, highways, health, police, fire, parks and playgrounds, and personnel are written by experts and contain much valuable in-

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formation in regard to the best practices to be followed in local administration. The survey is also of interest because it shows that the township under consideration is one in which there is a large amount of civic pride and popular interest, where there is a spirit of service among the employees, and where the investigators found "a general absence of major irregularities, favoritism, and corruption."

The Oxford University Press (American Branch) has issued a volume entitled the *City Government of Winchester* (pp. 1960). It contains eleven chapters on the early history of the municipality based upon the records of the fourteenth and fifteenth centuries. To the student of municipal origins some of these chapters are of prime interest; for example, the one which deals with the early rise of the mayor's office. Some significant documents, including early charters of the city, are included.

Cornelius F. Cahalane, Deputy Chief Inspector of Police of New York City, has written a very practical and carefully planned book entitled *The Policeman* (E. P. Dutton & Co., pp. xiii, 354). By way of introduction the author has a short chapter on the "Origin and Purpose of the Police" and a chapter on "Preparation for Patrol," which is devoted to such problems as the conduct and deportment of patrolmen on the street, discipline, and equipment. Then follow a number of chapters containing sound advice on such general matters as methods of patrol, arrests, street conditions, traffic, criminals and detective methods, court procedure, and more specialized problems, such as prostitution, narcotics, finger-prints, meetings in buildings and grounds, riots and disorders, records and reports, promotion, etc. Although intended as a manual for policemen, this work has much useful data for the student and teacher of municipal administration.

An interesting and valuable booklet on *The Evolution and Significance of the Modern Public Health Campaign* by Dr. C. E. A. Winslow has been published by the Yale University Press (pp. 65). The attention of those who are interested in public health as an important branch of state and municipal administration should also be called to the recent volume by Dr. Allan J. McLaughlin on *The Communicable Diseases* (Harper's, pp. 269), in which the author explains, fully and clearly, the work of the public authorities in preventing and controlling the epidemic diseases. The book is primarily interesting to social

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workers, teachers, and students of public administration, and to civic organizations.

A *Manual of Information on City Planning and Zoning*, by Theodora Kimball, has been issued by the Harvard University Press (pp. 188). The volume contains, in addition to much useful information on the aims, scope and methods of city planning, an elaborate bibliography of the subject covering about 130 pages. It is the newest, best-arranged, and most accurate compilation now available in this important field of civic interest.

Towns and Town Planning by T. H. Hughes and E. A. G. Lamborn is printed at the Clarendon Press (pp. 156). The volume explains the development of town-planning in England from earliest times to the present day, and contains a great many instructive illustrations.

The Biography of Sir Christopher Wren by Lawrence Weaver (Scribners, pp. 173) gives a concise account of one who was not only a great architect, but a scientist and scholar. There is an admirable discussion of Wren's part in the progress of town-planning.

Housing Progress in Western Europe by Edith Elmer Wood (E. P. Dutton & Company, pp. 210) gives a general resumé of the subject in Great Britain, France, Italy, Holland and Belgium. The author gives due attention both to municipal housing, and to housing schemes, which have been carried through by private initiative. A large amount of useful material is presented in readable form. There are some good illustrations.

The Russell Sage Foundation has recently issued a volume by Philip Klein on *The Burden of Unemployment* (pp. 260). It is a study of measures taken for the relief of unemployment in fifteen American cities during the industrial depression of 1921–1922.

Editing the Day's News by George C. Bastian (Macmillan, pp. 252) is intended as a textbook for college students and others who are planning to enter the profession of journalism. The book concerns itself with newspaper methods, not with journalistic policy, and is a thoroughly practical treatise. There are many enlightening illustrations.

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A new book by Bertrand Russell is entitled *The Prospects of Industrial Civilization* (Century Company, pp. 287). The author, as might be expected, is no optimist with reference to the prospects of civilization. His picture of contemporary civilization in America is doleful—the government is an oligarchy of multimillionaires, the press is always on the side of capital, the courts are controlled by the big interests, and so on. Yet Americans, he admits, are contented, and the fact is not at all to his liking. The author believes that our only hope lies—not in socialism, but in "the internationalization of production and distribution" together with "a genuine popular development of international thought."

The lack of any formal borderline between government and economics is borne home to the mind of anyone who reads Frank Tillyard's recent volume on *The Worker and The State* (Routledge, pp. 298). The book deals in a broad way with the British policy and state interference in industry, and more particularly with interference dictated by the considerations of health, safety and morals; in other words, what Americans would call intervention under the police power.

The title *Economics of the Hour* does not do justice to J. St. Loe Strachey's latest volume (Putnams, pp. 234). The book is not merely concerned with economics in the usual sense but ploughs far out into the field of government as well. In general, it is a defence of individualism and freedom. The author, as is well known, is the editor of the *Spectator*, and needs no testimony concerning the tolerance of his opinions or the vividness of his writing.

Economics and Ethics, by J. A. R. Marriott (E. P. Dutton & Co., pp. 293) is a broad and careful analysis of the relations which exist between the true principles of political economy and the precepts of morality. The author argues that there is no necessary antagonism here, and that the pursuit of wealth under the individualist system is entirely consistent with high moral standards. The concluding chapters of the book, which deal with the relation of the state to economic life, are of especial interest to students of government.

Among recent publications in the field of economics may be noted: *Outlines of Economic History in the Nineteenth Century*, by Garrett

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Droppers, *Industrial History of the United States,* by E. S. Cowdrick and *Banking and Credit* by D. R. Dewey and M. J. Shugrue (Ronald Press); *A Theory of Social Economy,* by Gustav Cassel, translated by Joseph McCabe, and *Human Effort and Human Wants,* by Logan G. McPherson (Harcourt Brace and Co.); a new edition of *Modern Industrialism,* by Frank L. McVey (Appleton); *The World Struggle for Oil,* by P. l'Espagnol de la Tramerze translated by C. L. Leese (Knopf); and *Absentee Ownership and Business Enterprise in Modern Times,* by Thurstein Veblin (Huebsch).

James A. Williamson's *English Colonies in Guiana* (Clarendon Press, pp. 191) deals with an almost forgotten chapter in English colonial history, namely the attempts to establish English settlements in South America during the seventeenth century.

A handsomely-printed volume on *Alaska* by Jeanette P. Nichols (Arthur H. Clark Co., pp. 456) gives the history of this territory's development and administration during the past fifty years. A considerable part of the book is devoted to political questions, particularly to the movement for Alaskan home rule.

Knut Gjerset's *History of Iceland* (Macmillan, pp. 482) gives the story of Icelandic colonization, narrates political and social development of the island, and explains the organization of its government. There is a final chapter on the Icelanders in Canada and the United States.

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RECENT PUBLICATIONS OF POLITICAL INTEREST

BOOKS AND PERIODICALS

CLARENCE A. BERDAHL

University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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